



Reserved On : 24/12/2025
Pronounced On : 18/03/2026

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

R/SPECIAL CIVIL APPLICATION NO. 18353 of 2018
With
CIVIL APPLICATION (FOR FIXING DATE OF HEARING) NO. 3 of
2025
In R/SPECIAL CIVIL APPLICATION NO. 18353 of 2018

FOR APPROVAL AND SIGNATURE:

HONOURABLE THE CHIEF JUSTICE MRS. JUSTICE SUNITA AGARWAL

and
HONOURABLE MR.JUSTICE D.N.RAY

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Approved for Reporting	Yes	No
	✓	

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VADRAJ CEMENT LIMITED & ANR.

Versus

UNION OF INDIA & ANR.

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Appearance:

DELETED for the Petitioner(s) No. 2

MR.SHALIN MEHTA, SENIOR COUNSEL WITH MR.GAURAV MEHTA, MR.AMIT LADDHA AND MR HARDIK P MODH(5344) for the Petitioner(s) No. 1

MS.HETAL PATEL, ASST.GOVERNMENT PLEADER for the Respondent(s) No. 2

MR.KIRTIMAN SINGH, SENIOR COUNSEL WITH MR HARSHEEL D SHUKLA(6158) for the Respondent(s) No. 1

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CORAM:HONOURABLE THE CHIEF JUSTICE MRS. JUSTICE SUNITA AGARWAL

and

HONOURABLE MR.JUSTICE D.N.RAY

CAV JUDGMENT



**(PER : HONOURABLE THE CHIEF JUSTICE
MRS. JUSTICE SUNITA AGARWAL)**

1. Heard the learned senior counsels for the parties and perused the record.
2. The present petition was heard at length on 18.12.2025 and the judgment was reserved. However, on the application, i.e. Civil Application No.03 of 2025 filed on behalf of the Union of India, the date 24.12.2025 had been fixed for further hearing, when the matter was further heard at length and the judgment was reserved.
3. The petitioner herein, namely Vadraj Cement Ltd. (Earlier known as ABG Cement Ltd.) is a company registered under the Companies Act' 1956 and has filed the present petition initially, through its Managing Director Mr.Vijay Prakash Sharma. However, on an order dated 07.08.2024 passed in Civil Application (For Amendment) No.01 of 2024, the petitioner has been substituted to be represented through Mr.Pulkit Gupta, the Interim Resolution Professional (IRP) of the petitioner Company appointed by the National Companies Law Tribunal (NCLT), Mumbai vide order dated 02.02.2024 passed in CP (IB) No.3528 / MV / 2018 and confirmed as the Resolution Professional of the applicant Company by its Committee of Creditors in their first meeting held on 02.03.2024.
4. However, later on the approval of the resolution plan by the NCLT, Mumbai vide order dated 01.04.2025, the name and identity of the company and the petitioner Company



herein has been substituted to be represented through its Authorized signatory Mr.Ajay Khushu.

5. The writ petition has been filed to impugn the provisions of Section 10A(2)(c) of the Mines and Minerals (Development and Regulation) Act, 1957 (for short, “the Act’ 1957” or “the MCDR Act’ 1957”) and Rule 8(4) of the Minerals (Other than Atomic and Hydro Carbons Energy Mineral) Concession Rules, 2016 (for short, “the Rules’ 2016” or “the MCR Rules’ 2016”), to be declared *ultra vires* of Articles 14, 18 and 21 of the Constitution of India. Further, challenge is to the order dated 17.11.2017 purportedly issued by the respondent No.1, namely the Union of India through the Secretary, Ministry of Mines, New Delhi, as communicated to the petitioner on 25.05.2018 by the respondent No.2 namely, the State of Gujarat through the Secretary, Industries and Mines Department, Gandhinagar.

6. The final prayer is to issue necessary directions to the respondent No.2, namely State Government to forthwith take all necessary steps to execute and register the mining lease deed with regard to the subject area admeasuring 300.6957 Hectares situated at Village Naniber, Taluka Abdasa, District Kachchh, as granted vide order dated 08.01.2017 issued by the State Government.

7. The relevant facts, in brief, to address the controversy at hands are that vide Government of India letter No.4/122/96/M-4 dated 01.12.1997 prior approval for Limestone mining lease for 30 years was granted over the



land admeasuring 730.60 Hectares situated at Naniber, Abdasa, District Kachchh. On 26.03.1998, the State Government (Government of Gujarat) issued Letter of Intent (LOI) for allotment of 730.60 Hectares of Limestone mining lease to the petitioners. The true copy of the Letter of Intent (LOI) is appended at page No. '31' of the paper-book as Annexure 'P-1'.

8. On 23.06.2010, the State Government sought permission of the Central Empowered Committee (CEC) to delete 2105.41 Hectares forest area in 57 villages of four districts of the State of Gujarat under Section 4 of the Indian Forest Act' 1927 (for short, "the Forest Act"). The issue regarding the allotment of these portions of land was pending before the Apex Court and the CEC had submitted a report dated 23.06.2010 before the Apex Court endorsing the deletion of the aforesaid area acknowledging the rights of the villagers in response to the areas notified under Section 4 of the Forest Act.

9. In the meantime, on 28.06.2011, the Environment Clearance was granted by the Ministry of Environment and Forest (MoEF) vide letter dated 28.06.2011 for the leased area of 730.60 Hectares, subject to implementation of the conditions mentioned therein and environmental safeguards. (Reference:- Page No. '35' at paragraph No. '6' (annexure 'P-2') of the paper-book.

10. It seems that in view of the new condition No. '2' imposed by the CEC in its report dated 23.06.2010, the petitioner had approached the Apex Court by way of an



Intervenor Application (IA) No.3026 – 3027 / 2009, seeking intervention in the said dispute stating that its rights were affected in the matter of grant of mining lease, as the proposed land ceased to be a forest land.

11. It seems that the Apex Court, while passing the order dated 22.07.2011, allowed the application filed by the State Government for deletion of the forest land. The CEC was in favour of the deletion subject to certain conditions and also the Ministry of Environment and Forest (MoEF) in its letter dated 07.01.2010 produced as Annexure 'R-3' before the Apex Court had stated that the application be considered favourably under such circumstances. The request made by the State Government for deletion of the area as shown in its application was found to be justified and the application was allowed, as such.

12. Further, with regard to the challenge by the petitioner to condition No. '2' imposed by the CEC in its report dated 23.06.2010, it was observed therein while disposing of the intervenor application filed by the ABG Cement Ltd. as under:-

“...However, with regard to the condition no.2 imposed by CEC, we express no final opinion specially in view of the stand taken by the State of Gujarat that no lease has formerly been granted to ABG Cement Limited in any of the areas as notified under Section 4 of the Act. ABG Cement Limited therefore would be aggrieved by the condition imposed by CEC, only if the State Government executes a lease deed in its favour or grants permission for mining, which is yet to happen. We therefore leave that question open. Learned senior counsel has further submitted that he would be permitted to move an application before the Ministry of Environment and Forests(MOEF)seeking approval for the grant of lease and also to make a plea before the Ministry of Environment and Forests (MOEF) for permission under the Forest (Conservation) Act, 1980



and also to challenge the condition no.2 ABG Cement Limited, if so advised may raise all those contentions before the Ministry of Environment and Forests (MOEF) and it is for the MOEF to consider with which we express no final opinion. IA No. 2881 of 2009 preferred by the State of Gujarat for deletion stands allowed, as above.

IA Nos. 3026-3027 filed by ABG Cement Limited are accordingly disposed of.”

13. It seems that in view of the observations of the Apex Court therein that it is for the Ministry of Environment and Forest to consider the prayer for grant of permission to the petitioner (ABG Cement Ltd.) under the Forest (Conservation) Act, 1980 and also to challenge condition No. ‘2’, the application dated 20.08.2011 was preferred by the petitioner for appropriate permission / clarification / exemption to the Ministry of Environment and Forest (MoEF), a copy whereof is appended at page No. ‘51’ (as annexure ‘P-3’) of the paper-book.

14. On 29.11.2011, the Government of Gujarat executed mining lease deed for the land admeasuring 336.1843 Hectares, out of the total area of 730.60 Hectares mentioned in the LOI dated 26.03.1998.

15. On 31.07.2012, the Central Government approved deletion of the subject land under Section 4 of the Forest Act with the condition including the prior approval for allotment of the land to be used for mining. On 11.10.2012, the petitioner requested the Industries and Mines Department, Government of Gujarat for granting mining lease for the balance area of approx. 300 Hectares and the reminder was sent on 05.11.2012.



16. On 21.01.2013, the State Government, Industries and Mines Department requested the District Collector, Kachchh to forward the proposal for getting approval under the Forest (Conservation) Act' 1984 regarding allotment of subject land for mining purpose to the petitioner at Village Naniber, District Kachchh. On 05.02.2013, a notification was issued by the State Government *inter alia* stipulating that none of the deleted area will be allowed to be used for mining without obtaining prior approval under the Forest (Conservation) Act' 1984. The copy of the said notification is appended at page No. '58' (as annexure 'P-4') of the paper-book.

17. On 12.01.2015, the Mines and Minerals (Development and Regulation) Amendment Act' 2015 (for short, "the Amendment Act' 2015") (Act No.10 of 2015) came into force w.e.f. 12.01.2015, bringing into force the auction regime for grant of mining lease.

18. It is submitted by the learned Senior Counsel for the petitioner that though Section 10(A)(1) made all prior applications ineligible, but Section 10(A)(2)(c) saved the applications where a Letter of Intent (LOI) was issued prior to 12.01.2015, providing therein that the mining lease, in such cases, should be granted within a period of two years, i.e. on or before 11.01.2017.

19. As the petitioner was faced with the changed situation because of the new enactment, the petitioner again approached the Apex Court on 08.09.2016 in I.A.NOS.3722 IN IA 2881 & 3026-3027 (for directions/clarification), In Writ



Petition(s)(Civil) No(s). 202/1995 **[T.N. Godavarman Thirumulpad V. Union of India & Ors]**, wherein the following order dated 08.09.2016 was passed:-

“Insofar as the interlocutory application filed by ABG Cement Limited is concerned, the CEC submitted a separate report dated 1.4.2011. In the instant report, the same four conditions, which were expressed in the original report of the CEC dated 23.06.2010, were sought to be incorporated. It is in the above circumstances, that ABG Cement Limited has again approached this Court, in view of the liberty granted to the applicant by this Court's order dated 22.07.2011, to assail condition no.2.

It would be pertinent to mention, that simultaneously with the filing of the instant application, ABG Cement Limited also moved an application on 20.08.2011 under Section 3 of the Forest (Conservation) Act, 1980, for permission/clarification/exemption under the provisions of the Forest (Conservation) Act, 1980 for conducting limestone mining operations on the leased land at Kutch, in the State of Gujarat. On account of the fact, that the Ministry of Environment and Forests has not taken any decision on the application filed by ABG Cement Limited, it has again approached this Court, to require the concerned competent authority to dispose of the application dated 20.08.2011.

During the course of hearing of the instant interlocutory application, the case projected by the applicant also was, that the order passed by this Court on 22.07.2011 be clarified, so as to enable the concerned competent authority, to expeditiously dispose of the application filed by ABG Cement Limited, under Section 3 of the Forest (Conservation) Act, 1980.

We would not have, as a matter of routine, accepted the prayer made by the learned counsel for the applicant, as has been noticed in the foregoing paragraphs. However, on examining the complication of the legal issue involved, we were satisfied, that a determinative order needed to be passed for an effective disposal of the application filed by ABG Cement Limited, under Section 3 of the Forest (Conservation) Act, 1980. It is therefore, that we would venture to adjudicate upon the limited issue, which has been projected before us, during the course of hearing. For the aforesaid purpose, it would be necessary to narrate some facts relied upon by the applicant. They are being recorded hereunder.



It is not a matter of dispute, that ABG Cement Limited moved an application under the Forest (Conservation) Act, 1980 for conducting limestone mining operations, over land given to it on lease by the State of Gujarat. In this behalf, it would be relevant to mention, that by notification dated 21.8.1984, (issued under Section 4 of the Indian Forest Act, 1927), the Government of Gujarat expressed its intention to declare certain areas of land as reserved forest, in district Kutch, in the State of Gujarat.

The land depicted in the Section 4 notification, inter alia, included land over which ABG Cement Limited, had been granted a mining lease. By an award dated 9.11.1995, the Forest Settlement Officer, inter alia, deleted an area of 364.22 hectares, out of the area notified under Section 4, referred to above.

Learned counsel for the applicant also highlights, that the State of Gujarat by a letter dated 26.3.1998 gave an in-principle approval in favour of ABG Cement Limited, for carrying on limestone mining, in an area of land measuring 730.60 hectares, falling within the revenue estate of village Naniber of Abadasa Taluka, in District Kutch, in the State of Gujarat. Consequent upon the receipt of the in-principle approval, ABG Cement Limited paid prospecting charges to the Government of Gujarat. Out of the area of 730.60 hectares of land, in-principle allotted to ABG Cement Limited for limestone mining, an area of 364.22 hectares formed part of a larger area of land (measuring 10935.2611 hectares), notified under Section 4, referred to above.

After the deletion of the area of 364.22 hectares expressed in the award of the Forest Settlement Officer dated 9.11.1995, the remaining land is still subject to a declaration through an award as reserved forest. Interlocutory application nos. 1228-1229 were filed by the State of Gujarat before the CEC. The CEC through IA No. 2881 submitted its recommendations to this Court, for the deletion of 364.22 hectares of land (from out of area of 10935.2611 hectares), as the same should be treated as reserved forest.

It is necessary to point out, that the CEC recommended the deletion of 10935.2611 hectares of land, out of the purview of the total land measuring 33607.9406 hectares, originally notified under Section 4, and while making the above recommendations, just as in the first report of CEC dated 23.6.2010, it again imposed the same four conditions:

“The CEC recommended the deletion of 10935.2611 hectares of land out of the purview of the total land admeasuring 33607.9406 hectares originally notified under Section 4 of the



Indian Forest Act, 1927. However, the CEC made the following recommendations:

- (i) no area will be deleted on the ground of its allotment done after the issue of notifications under Section 4 of the Indian Forest Act; and
- (ii) none of the deleted area will be allowed to be used for mining without obtaining approval under the Forest (Conservation) Act, 1980; and
- (iii) .for deletion of the area approval under the Forest (Conservation) Act, 1980 will be obtained. However, no NPV or compensatory afforestation charges will be payable as the areas are to be deleted for settlement of rights as per the provisions of the Indian Forest Act, 1927; and
- (iv) the balance areas will be notified as Reserved Forest under section 20 of the Indian Forest Act, 1980.”

Being aggrieved of condition at (ii) above, imposed by the CEC, the applicant - ABG Cement Limited, in whose favour an area of 730.60 hectares (including the aforesaid area of 364.22 hectares of land) had been granted an in-principle approval, for carrying on lime-stone mining, which included the land deleted/excluded from the purview of the notification issued under Section 4.

As noticed hereinabove, the afore-stated application nos. 3026-3027 filed by ABG Cement Limited, were disposed of on 22.7.2011, when this Court, while approving the deletion of 10935.2611 hectares out of the purview of Section 4 notification (including the aforesaid area of 364.22 hectares of land), pointedly observed, that condition no.2 imposed by the CEC was tentative, and that ABG Cement Limited - the applicant herein would be at liberty to make an appropriate representation/application to the Ministry of Environment and Forests, for seeking appropriate clarification (order dated 22.7.2011 has already been extracted hereinabove).

Pursuant to the liberty granted by this Court to the applicant - ABG Cement Limited, the applicant filed an application seeking the approval of the Ministry of Environment and Forests, for the grant of a mining lease, over the area which had already been permitted, subject to the deletion of the area from the purview of Section 4 notification. That the applicant made the following requests to the Ministry of Environment and Forests, in its application filed under Section 3 of the Forest (Conservation) Act, 1980:



"15. In view of the order dated 22.7.2011 passed by the Hon'ble Supreme Court of India and, by way of abundant caution, we would request you to kindly give your approval and clarify that the provisions of Forest (Conservation) Act, 1980 would not apply to the said land admeasuring 364.22 hectares, which has ceased to be Forest Land."

Insofar as the aforesaid prayer is concerned, it was sought to be clarified to us, during the course of hearing, that the same was based on an earlier order passed by this Court dated 8.2.1989 in Banwasi Seva Ashram vs. State of Uttar Pradesh, wherein this Court, inter alia, mandated as under:

"We are of the view that the lands which are subjected to the Notification under Section 4 of the Forest Act would also come within the purview of Section 2 of the Forest (Conservation) Act, 1980 and it would, therefore, be necessary for the N.T.P.C. to obtain appropriate clearance under that Act from the appropriate authority."

We are of the view, that the aforesaid order was with reference to the transitory period, namely, from the date of the issuance of the notification under Section 4 of the Forest Act, till the culmination of the process of declaration under Section 20 of the Forest Act. We are of the view, that the afore-stated direction was inevitable, in view of the fact, that in case an individual was desirous of using forest land for non-forest purposes, permission under Section 2 of the Forest (Conservation) Act, 1980 was imperative, and it is therefore, that even during the transitory period, it would be open to the Ministry of Environment and Forests, to approve a request for use of forest area for non-forest purposes, under Section 2 afore-mentioned.

During the course of hearing, it was the contention of the learned counsel for the applicant, that use of reserved forest land and/or forest land for non-forest purposes needs the prior approval in terms of section 2 of the Forest (Conservation) Act, which is extracted hereunder:

"2. Restriction on the dereservation of forests or use of forest land for non-forest purpose - Notwithstanding anything contained in any other law for the time being in force in a State, no State Government or other authority shall make, except with the prior approval of the Central Government, any order directing, -



(i) that any reserved forest (within the meaning of the expression “reserved forest” in any law for the time being in force in that State) or any portion thereof, shall cease 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 or any portion thereof 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 Government;

(iv) that any forest land or any portion thereof may be cleared of trees which have grown naturally in that land or portion, for the purpose of using it for reafforestation.

Explanation-For the purposes of this section “non-forest purpose” means the breaking up or clearing of any forest land or portion thereof for-

(a) the cultivation of tea, coffee, spices, rubber, palms, oil-bearing plants, horticulture crops or medicinal plants;

(b) any purpose other than reafforestation, but does not include any work relating or ancillary to conservation, development and management of forests and wild-life, namely, the establishment of check-posts, fire lines, wireless communications and construction of fencing, bridges and culverts, dams, waterholes, trench marks, boundary marks, pipelines or other like purposes.”

It was however pointed out, that in a given situation, as in the present case, where the government land is sought to be declared as reserved forest, but some of the land originally mentioned in the Section 4 notification, is deleted, then clearance under Section 2 of the Forest (Conservation) Act, 1980 would be a prerequisite condition, for use of the said land for non-forest purposes, only and only, if the deleted land is forest area and not otherwise.

It was the contention of the learned counsel for the applicant - ABG Cement Limited, that the area of 364.22 hectares, which was sought to be deleted from the area notified under Section 4 of the Indian Forest Act, did not actually remain forest land, and as such, did not require clearance mandated under Section 2 of the Forest (Conservation) Act,



1980. To support his afore-stated contention, learned counsel for the applicant has placed reliance on the award of the Forest Settlement Officer dated 9.11.1995 (with reference to Case No. 1/1995-96), which expressly pertains to the area of 364.22 hectares of village Naniber of Abadasa Taluka in district Kutch, in the State of Gujarat. A relevant extract from the order passed by the Forest Settlement Officer dated 9.11.1995 reveals, that based on the enquiry conducted by the Forest Settlement Officer, there was a village settlement in the area.

“5.Decision and Points After taking into consideration the replies of the leader of Local Group Gram Panchayat, Moti Ber, Group Gram Panchayat's Sarpanch, Nani Ber, Village people and the leaders, Talati of Moti Ber Group Gram Panchayat- who also hold charge of Talati of Nani Ber village, the Deputy Forest Conservator, Kutch western Forest Division's Representatives, Range Forest Officer, Normal Range, Naliya etc., I am required to decide the following points:-

Points

1. Whether the area being Firing Survey No.79,80, 82 to 86, 94(part) 96 to 107, 113 to 119 of village Nani Ber of Abdasa taluka would Remain as 'reserved forest' or not?
.....No.
2. Is there any public or private right & interest involved in the above Firing Survey Numbers? Yes,in great proportion
3. What should be the final order? As stated in Point No.7

xxx xxx xxx xxx xxx

7.ORDER

While thinking in broad sense in respect of the above facts and after getting the replies, submissions, representations of all concerned, and on taking into account the 'certificate' of the Geologist and in accordance with the authority vested in me vide Section 11,12,15 & 16 of the Indian Forests Act, 1927, it is hereby ordered and resolved that the entire area of village 'Nani Ber' of Abdasa Taluka admeasuring Hectares 364.22 Are (Acre 900-00 gutha) in relation to Firing survey No. 79, 80, 82, 83, 84, 85, 86, 94(part) 97, 98, 99, 100, 101, 102, 103, 104 ,105, 106, 107, 113, 114,115,116,117,118 & 119 will not be kept as 'reserved forest' and hence, the question relating to the



facts of common people does not arise at all, and hence the Schedule 'A' will be treated as NIL."

(underline is ours)

On a consideration of the order of the Forest Settlement Officer extracted above, the Forest and Environment Department of the State of Gujarat has on 23.08.2016 ordered as under:

"In view of above, consequent to due process of settlement and proceedings therein, as provided in IFA 1927 and forest settlement report, due to reasons recorded therein, entire area of 364.22 ha, declared u/s 4, not being recommended to be declared as forest u/s 20, has been deleted, from section 4 thereby leaving no area to be declared u/s 20. Hence no procedure for declaring the area u/s 20 was required.

In view of the above situation, state hereby declares that consequent to completion of legal process of forest settlement and right examination, appellate procedure, and the process provided in IFA 1927, from section (4) to (20) and acceptance of Forest Settlement report, entire area of 364.22 ha. Of survey numbers 79, 80, 82, 83, 84, 85, 86, 94 part, 96, 97, 98, 99, 100, 101, 102, 103, 104, 105, 106, 107, 113, 114, 115, 116, 117, 118, 119 of Nanibar village of Kutch district - initially declared u/s 4 not being recommended to be fit for declaring u/s 20, owing to the reasons, recorded in the forest settlement report - has been deleted, from section 4 and there being no area left for declaring u/s 20, the notification for section 20 is not required and entire procedure for declaring the forest may be deemed to have been completed and area of 364.22 ha. Of survey numbers 79, 80, 82, 83, 84, 85, 86, 94 part, 96, 97, 98, 99, 100, 101, 102, 103, 104, 105, 106, 107, 113, 114, 115, 116, 117, 118, 119 of Nanibar village of Kutch district, declared u/s 4, is reverted back to its original status of revenue land."

In view of the above, the release of area measuring 364.22 hectares, which is the subject matter of consideration, is clear.

It is not necessary for us to dwell into the instant aspect of the matter any further. All that needs to be recorded is, that under Section 3 of the Indian Forest Act, 1927, the kinds of land which can be declared as



reserved forest has been expressly delineated therein.
Section 3 afore-mentioned is reproduced below:

“3. Power to reserve forests - The State Government may constitute any forest-land or waste-land which is the property of Government, or over which the Government has proprietary rights, or to the whole or any part of the forest produce of which the Government is entitled, a reserved forest in the manner hereinafter provided.”

(underline is ours)

It is out of the above lands, that the State Government can notify a reserved forest area, under Section 4 of the Indian Forest Act, 1927. The same is also reproduced below:

“4. Notification by State Government - (1) Whenever it has been decided to constitute any land a reserved forest, the State Government shall issue a notification in the Official Gazette -

(a) declaring that it has been decided to constitute such land a reserved forest;

(b) specifying, as nearly as possible, the situation and limits of such land; and

(c) appointing an officer (hereinafter called “the Forest Settlement Officer”) to inquire into and determine the existence, nature and extent of any rights alleged to exist in favour of any person in or over any land comprised within such limits or in or over any forest produce, and to deal with the same as provided in this Chapter.

Explanation - For the purpose of clause (b), it shall be sufficient to describe the limits of the forest by roads, rivers, ridges or other well-known or readily intelligible boundaries.

(2) The officer appointed under clause (c) of subsection (1) shall ordinarily be a person not holding any forest-office except that of Forest Settlement Officer.

(3) Nothing in this section shall prevent the State Government from appointing any number of officers not exceeding three, not more than one of whom shall be a



person holding any forest-office except as aforesaid, to perform the duties of a Forest Settlement Officer under this Act.”

It is apparent from a collective reading of Sections 3 and 4 of the Indian Forest Act, extracted hereinabove, that in case of a deletion of an area, which was proposed to be declared as a reserved forest, the area so deleted will revert to the original nomenclature of the said area, i.e., the nomenclature which the land had, prior to the issuance of the notification under Section 4 of the India Forest Act.

Out of the kinds of land expressed in section 3, it is apparent, that if the land notified under Section 4 was not forest land but waste land, or some other kind of land over which Government has proprietary rights, on the deletion of the area notified under Section 4, such land would stand restored to its original nomenclature as forest land and/or alternatively such type of land, such as waste land, over which the Government has proprietary rights. In the afore-mentioned latter category of land, no clearance contemplated under Section 2 of the Forest (Conservation) Act, 1980, can be insisted on. It is only with reference to reserved forest land, or land which is notified for being declared as reserved forest, or forest land, that a clearance is contemplated under Section 2 of the Forest (Conservation) Act, 1980.

In view of the above, we direct that in the application filed by the applicant - ABG Cement Limited, the concerned competent authority shall, in the first instance, determine the nomenclature of the land deleted from the notification issued under Section 4 of the Indian Forest Act, 1927, prior to the notification. If it emerges, that the relevant land is forest land, then and then alone, the concerned competent authority will further determine, whether permission should be granted to the applicant to carry on non-forest operations, namely, mining operations for conducting limestone mining. If the released land was originally not forest land, no forest clearance would be required.

The instant application stands disposed of in the above terms.

The concerned competent authority is directed to take a final decision on the application dated 20.08.2011 filed by the applicant herein - ABG Cement Limited under Section 3 of the Forest (Conservation) Act, 1980, within two months from the date of passing of this order.”

20. It is contended by the learned Senior Counsel for the petitioner that soon after getting the order dated 08.09.2016, the petitioner wrote a letter dated 23.09.2016 to the



Additional Chief Secretary, Industries and Mines Department, Government of Gujarat, appending the office orders dated 26.03.1998, the letter dated 24.06.2014 and the order of the Apex Court dated 08.09.2016, praying for issuance of the grant order for Limestone mining lease in favour of the ABG Cement Ltd. (the then Company) for the remaining part of LOI area, i.e. 300.69.57 Hectares as per the decision of the Apex Court and to issue necessary directions to the Collector, Kachchh in that regard. The said communication is at page No. '109' (Annexure 'P-7') to the writ petition.

21. It is stated in the writ petition that in furtherance thereof, on 03.01.2017, the Geologist in the office of the Commissioner of Geology and Mining proposed granting of mining lease. However, the State Government, acting belatedly, issued the order dated 08.01.2017 of granting lease to the petitioner for the balance area of 300.6957 Hectares, for Limestone mining lease for captive consumption, as per the terms and conditions mentioned therein. [Reference:- Page No. '112' Annexure 'P-8' to the writ petition.] It is the case of the petitioner in the writ petition itself that the order granting mining lease was communicated to the petitioner on 09.01.2017, just two days prior to the expiry of the period of two years, contemplated in Section 10(A)(2)(c) of the Mines and Minerals (Amendment) Act' 2015, which came into force with effect from 12.01.2015.

22. The authorized officer of the petitioner Company immediately approached the concerned official for taking steps to execute the lease deed on 10.01.2017 and



11.01.2017, however, the officials were all engaged in the Global Investors Summit held between 09.01.2017 to 13.01.2017 at Gandhinagar and other programs held at Kachchh.

23. On 11.01.2017, the petitioner addressed a letter to the Geologist at Bhuj, Kachchh requesting further details of the stamp duty payable and formalities concerned for furnishing of the performance bank guarantee required for executing the lease deed. (See Annexure 'P-9' at page Nos. '119' - '120' of the paper-book)

24. A perusal of the said letter indicates that the petitioner submitted the relevant documents including the Village map with the demarcation for lease area admeasuring 300.69.57 Hectares; copy of approval of mining plan from the Indian Bureau of Mines over the entire area of 730.60 Hectares; copy of the environmental clearance over an area admeasuring 730.60 Hectares; copy of deposited exploration charges over an area admeasuring 730.60 Hectares; letter from the Section Officer, Industries and Mines Department dated 24.06.2014 about the status of mining lease granted to ABG Cement Ltd., the grant letter dated 08.01.2017 from the Industries and Mines Department, State of Gujarat, including Form 'K' requesting to execute the mining lease deed for Limestone mineral over the area admeasuring 300.69.57 Hectares in Village Naniber, Taluka Abdasa, District Kachchh.

25. On 16.01.2017, the Geologist, Kachchh even wrote to the Deputy Collector (Stamps) inquiring about the stamp duty



payable by the petitioner Company, namely ABG Cement Ltd. However, the stamp duty rate had not been provided. The petitioner paid an amount of Rs.10,000/- towards security deposit with the authority and the copies of the communication dated 16.01.2017 from the Geologist, Deputy Collector (Stamps), Kachchh and the Challan No.231 dated 16.01.2017 for payment of Rs.10,000/- as security deposit, as aforesaid, are appended as Annexures 'P-10' and 'P-11' of the paper-book.

26. The petitioner again approached the Commissioner, Geology and Mining Department at Gandhinagar by writing a letter dated 24.01.2017 requesting his office to assist the petitioner for execution of lease agreement of the mining lease. It is stated in the writ petition itself that inspite of sincere and frantic efforts made by the petitioner, the State Authorities did not permit the petitioner to take steps to execute and register the lease deed taking aid of the impugned Rule 8(4) of the Rules framed under the Amendment Act' 2015.

27. It is contended therein that since there was no default on the part of the petitioner, the State Government sought opinion of the Central Government vide communication dated 03.06.2017, wherein it was observed that:-

"As per our understanding, this lease can be executed as it has been granted before 12/1/2017. Please confirm our understanding or guide k'is accordingly."

28. By way of abundant caution, the petitioner also wrote a letter dated 25.07.2017, to the Government of India, Ministry of Mines, New Delhi to permit the Government of Gujarat to



sign the lease agreement with the petitioner. A Special Civil Application No.15271 of 2017 was filed by the then company, namely ABG Cement Ltd. wherein, notice was issued to the respondents vide order dated 23.08.2017. During the pendency of the said writ petition, vide impugned order (termed as *ex parte*) dated 17.11.2017, it was intimated by the Under Secretary, Government of India, Ministry of Mines, New Delhi, with reference to the clarification letter dated 03.06.2017 of the State Government, that:-

“6. Where as the date of commencement of the period of ML is the date on which a duly executed deed is registered. Finality with regard to an application getting converted to ML is achieved only when the duly executed deed is registered. The position in this regard is further fortified by considering the fact that until the point the executed deed is registered, the State Govt can revoke the order granting the lease. However, after the ML deed is executed and registered, the powers of the State Govt in this regard i.e. to terminate the lease are curtailed. Termination of an ML can be done by the State Govt only in the event of the lessee not allowing entry and inspection, being convicted of illegal mining, default in making payment of royalty, violation of transfer norms, etc. There is proper procedure prescribed in this regard. Unless a duly executed deed for ML is registered it remains a mere application and the saving under 10A (2)(c) will cease to be available after 11.1.2017. Construction of rule 8(4) is a continuation of the statutory procedure as was stipulated in MCR, 1960. Nothing new has been added.

7. Therefore, the construction of rule 8 is in consonance with the provisions of the Act in that rule 8 stipulates that the exercise of converting an application to an ML, is completed by 11.1.2017 which process includes grant, execution and registration.

8. Where as the Rule 8(4) envisages that the execution of lease and its registration would be required to construe it as grant for the purpose of section 10A(2)(c). In this regard, it is reiterated that the 2 year period which lapsed on 11.01.2017, was provided in the MMDR Amendment Act, 2015 which needs to be complied with for considering the eligibility of applications. Thus, after 11.01.2017



the mining lease applications covered by 10A (2) (c), which have not been granted, has become ineligible.

9. Now therefore, it is inform that after 11.01.2017, the mining Lease applications covered by 10A (2) (c), which have not been granted, have become ineligible, including the said application of M/s ABG Cement Ltd.”

29. It is submitted in the writ petition that the petitioner Company was informed about the order dated 17.11.2017 only on 25.05.2018 and by an order dated 18.06.2018, the Special Civil Application No.15271 of 2017 was rendered infructuous and dismissed with the liberty to the petitioner to challenge the communication dated 17.11.2017 before the appropriate forum, as may be permissible in law.

30. The petitioner, thereafter, preferred the writ petition before the Apex Court under Article 32 of the Constitution of India, which was registered as Writ Petition (C) No. 1055 of 2018, which was later withdrawn by the order dated 16.11.2018 passed by the Apex Court with the liberty to approach this Court.

31. The present writ petition was, then, presented on 26.11.2018. Vide detailed order dated 04.12.2018, while recording the arguments of the learned Senior Counsel appearing for the petitioners, It was noted that:-

“... At this stage, upon prima facie consideration of submissions made by learned Senior Advocate appearing for the petitioners and a careful perusal of the record, more particularly, relevant sections and rules governing subject writ petition vis-a-vis clarification sought for by the State authorities and information given by Ministry of Mines of Government of India vide order dated 17.11.2007 and the requirement of consideration of contentions raised qua challenge to the vires in this petition in detail along with



interpretation of word 'grant' so reflected, at this stage, we are inclined to issue notice to the respondents returnable on 26.12.2018.

... In the meanwhile, status quo qua subject lease land granted in favour of the petitioners vide order dated 08.01.2017 passed by Department of Industries of Mines, State of Gujarat to be maintained by the parties.

... Issue notice to the learned Attorney General of India.”

32. During the course of hearing of the writ petition, on the submission made by the learned Senior Counsel for the Union of India namely, the respondent No.1 that pursuant to the judgment and order dated 08.09.2016 of the Apex Court passed on the interlocutory application filed by the petitioner Company, namely the then ABG Cement Ltd., a final decision was required to be taken on the application dated 20.08.2011 filed under Section 3 of the Forest (Conservation) Act' 1980 and only thereafter the process for issuance of letter of grant could be initiated, we have issued directions to the learned Counsel appearing for the respondent No.1 to file an affidavit of the competent officer to bring on record the decision on the application dated 20.08.2011 filed by the petitioner, if any.

33. Pursuant thereto, an affidavit dated 01.11.2025 of the Regional Controller of Mines to the Government of India in the Indian Bureau of Mines, Regional Office, Gandhinagar, Gujarat was filed on behalf of the respondent No.1 - Union of India, Ministry of Mines, wherein it is stated that after getting the order dated 08.09.2016, the Company, namely M/s ABG Cement Ltd. ought to have approached the Ministry of Environment, Forest and Climate Change (MoEF&CC) for



disposal of its application dated 20.08.2011. It is contended that in view of the development, which took place after passing of the judgment and order dated 08.09.2016 of the Apex Court irrespective of the nomenclature of the land, final decision upon the application dated 20.08.2011 for grant of approval was required to be taken by the competent authority of MoEF&CC. The petitioner company (M/s ABG Cement Ltd.), however, had not approached the MoEF&CC for disposal of its application dated 20.08.2011.

34. The submission in the affidavit filed on behalf of the Union of India is that the ABG Cement Ltd. moved the application dated 20.08.2011 to the MoEF&CC, inasmuch as, in the order dated 31.07.2012 issued by the Central Ministry, wherein the Central Government approved to delete 1103.227 of the forest area notified under Section 4 of the Forest Act, the following conditions were mentioned:-

- "i No area will be deleted on the ground of its allotment done after the issue of notification under Section 4 of the Indian forest Act,
- ii None of the deleted area will be allowed to be used for mining without obtaining prior approval under the Forest (Conservation) Act, 1980.
- iii The State Government shall ensure compliance of the conditions mentioned here in above"

35. The contention is that the Government of Gujarat vide Gazette notification dated 05.02.2013 also contemplated that none of the deleted area will be allowed to be used for mining without obtaining prior approval under the Forest (Conservation) Act' 1980. The conditions of the said notification, as relied upon by the respondent No.1, are to be noted as under:-



“The Government of Gujarat approached the Hon'ble Supreme Court vide I.A. No. 1228 and I.A. 1229 with the request to permit the above deletion of Section 4 lands. The Hon'ble Supreme Court, vide their judgments dated 22-7-2011 and dated 23-9-2011 permitted to the above deletion with the following conditions.

- i No area will be deleted on the ground of its allotment done after the issue of notification under Section 4 of the Indian forest Act,
- ii None of the deleted area will be allowed to be used for mining without obtaining prior approval under the Forest (Conservation) Act, 1980.
- iii The State Government shall ensure compliance of the conditions mentioned here in above”

36. It is, thus, submitted on behalf of respondent No.1 Union of India that, in any case, prior approval under the Forest (Conservation) Act' 1980 was mandatory even for the deleted area for the purpose of use for mining activities.

37. It is submitted that irrespective of the nomenclature of the subject land, final decision upon the application dated 20.08.2011 of the petitioner in terms of the order of the Supreme Court dated 08.09.2016 was to be taken by the Central Ministry, i.e. namely MoEF&CC. In other words, the approval of the MoEF&CC while disposing of the application of the petitioner dated 20.08.2011 was necessary for grant of mining lease.

38. It is further contended therein that even after deletion of the area admeasuring 364.22 Hectares of Naniber Village vide State Government notification dated 05.02.2013, prior approval from the MoEF&CC under Section 03 of the Forest



(Conservation) Act' 1980 was necessary for taking up mining activities in the said area. No such proposal, however, had been submitted by the petitioner Company either on the online portal or offline. The grant order dated 08.01.2017 issued by the State Government, therefore, is not in consonance with the MoEF&CC letter dated 31.07.2012 and the State Government Notification dated 05.02.2013.

39. It is further submitted that the environmental clearance dated 28.06.2011 granted to the petitioner was conditional subject to the grant of forestry clearance as also the final outcome of the application of the petitioner under the order of the Apex Court.

40. Moreover, as per Section 10A(2)(c) of the Act' 1957 of the Amendment Act' 2015 and Rule 8 of the Rules framed thereunder, the requirement of execution of the lease deed had not been fulfilled before the cutoff date, i.e. 11.01.2007. No mining lease deed could be executed in favour of the petitioner after the cutoff date, which is 11.01.2017 and, as such, prayers made in the writ petition are liable to be rejected.

41. However, from the affidavit filed on behalf of the Union of India, Ministry of Mines, namely the respondent No.1 herein, atleast, it is admitted that no decision whatsoever has been taken on the application dated 20.08.2011 by the MoEF&CC in terms of the judgment and order dated 08.09.2016 passed by the Apex Court, wherein the competent authority was directed to take a decision within a period of two months from the date of the said order.



42. Coming to the stand of the State authorities in their affidavits-in-reply dated 28.02.2024 and 30.10.2025, it is stated therein that the lease deed cannot be executed after expiry of the period prescribed in Section 10A(2)(c) of the Amendment Act' 2015, inasmuch as, the condition of the letter of grant dated 08.01.2017 were not fulfilled prior to the said date. It is submitted that the grant of mining lease was subject to and as per the terms and conditions stated in the said order, which clearly provides that:-

"With a request to approach the collector of Kachchh, Dist. Kachchh or execution of mining lease deed. The applicant is required to execute and register the lease deed for the said grant order as per the provisions prescribed in Rule 8(4) of Minerals(other than Atomic and Hydro Carbons Energy Minerals) Concession Rules, 2016".

43. The contention is that after receipt of the letter of grant, the ABG Cement Ltd. through its authorized signatory had contacted the Geologist, Commissioner of Geology and Mining, Gandhinagar by writing a letter dated 11.01.2017, wherein it required details of the stamp duty and registration charges for execution of the lease deed. But the petitioner did not annex any document / communication along with the said letter that substantiated that effort was made to intimate the District Inspector of Land Reforms (DILR), Kachchh for measurement of the subject land before 11.01.2017, which was necessary condition for culmination of the order of grant into mining lease deed. Further, by the letter dated 24.01.2017, the ABG Cement Ltd. requested the Commissioner, Geology and Mining, Gandhinagar to grant couple of days for payment of stamp duty and atleast four to six weeks for furnishing performance bank guarantee.



44. In light of the same, the respondent No.2 herein, namely the Industries and Mines Department, Gandhinagar sent a communication dated 03.06.2017 to the Secretary, Ministry of Mines, New Delhi seeking guidance with regard to the execution of mining lease over an area admeasuring 300.69.57 Hectares and the said request was rejected vide order dated 17.11.2017 by the Ministry of Mines, Government of India, inasmuch as, the mining lease applications covered by Section 10A(2)(c) became ineligible after 11.01.2017. No relief, as such, can be granted to the petitioner herein.

45. On the contention of the petitioner about the delay on the part of the State authorities, it is submitted that *"delay is no ground, whatsoever, either in fact or in law to enable the petitioner to claim the applicability of the statutory provisions, inasmuch as, the question as to whether the statute can operate in the facts and circumstances of the present case."* It is stated therein that there is no vested right with the petitioner to seek for execution of the mining lease; the order for grant was subject to fulfillment of conditions for execution of the lease deed to make the petitioner eligible; the execution of mining lease is not an empty formality and a decision to grant lease being conditional cannot be treated as a decision for grant of lease; no right, as such, had accrued in favour of the petitioner by mere issuance of the letter of grant dated 08.01.2017.

46. It is contended that no interest can be created in the subject land prior to the registration and even otherwise, under the old regime, in case lease deed was not executed on



account of the fault of the applicant, the State Government was empowered to revoke the grant. However, by virtue of Rule 8(4) of the Rules' 2016, revocation of grant is automatic, in cases where after, the order for grant of mining lease issued under sub-rule (2) of Rule 8, mining lease has not been executed in the format specified in Schedule B VII and registered on or before 11.01.2017.

47. It was argued by the learned Assistant Government Pleader appearing for the State respondent that in view of the forfeiture clause in Rule 8 sub-rule (4), as a result of failure of the petitioner in getting the lease deed executed and registered on or before the cut off date, i.e. 11.01.2017, it was not incumbent for the State Government to issue any order of revocation of the grant. Rather, the order of grant of mining lease issued under sub-rule (2) of Rule 8 automatically stood revoked and, thereafter, the State Government is denuded of the power to execute the lease deed. It is the case of the respondent State that the grant of lease being being guided by the statute and there being no vested or fundamental right to seek grant of mining lease, no estoppel would operate against the State by mere issuance of the letter of grant dated 18.07.2017. The ineligibility of the petitioner came into existence from the next date, i.e. 12.07.2017 by operation of the statute, namely Section 10A(2)(c) of the Amendment Act' 2015 read with Rule 8(4) of the Rules' 2016 framed thereunder.

48. Mr.Shalin Mehta, the learned Senior Counsel appearing for the petitioner, in order to impress upon the case of the



petitioner, though initially sought to make submissions on the validity of Section 10A(2)(c) of the Act' 1957 inserted by Act No.10 of 2015 w.e.f. 12.01.2015 as also Rule 8(4) of the Rules' 2016 being *ultra vires*, on the test of scrutiny of Articles 14, 19 and 21 of the Constitution of India (as per prayer 10(B) of the writ petition), however, after a brief submission thereon, the learned Senior Counsel has continued his arguments to assail the order dated 17.11.2017 passed by the respondent No.1 rejecting the claim of the petitioner on the ground of ineligibility. The submissions is that there is no question of the petitioner having become ineligible when there is complete inaction on the part of the respondent No.1 in complying with the directions issued by the Apex Court in the order dated 08.09.2016.

49. It was submitted that the letter of intent, in favour of the petitioner herein for grant of 730.60 Hectares of land in Naniber Village, Kachchh was issued as early as on 26.03.1998, which was on the basis of in-principle approval granted by the Central Government vide letter dated 01.12.1997, subject to fulfillment of five conditions therein.

50. Out of total area, 366.38 Hectares was revenue land, whereas the remaining 364.22 Hectares was reserved land notified under Section 4 of the Forest Act. However, the State Government sought permission of the CEC to delete 2105.42.41 Hectares of authorized area comprising of 57 villages in four districts of the State of Gujarat under Section 4 of the Forest Act. When the issue was pending before the



Apex Court in **T.N. Godavarman Thirumulpad**¹, the CEC in its report dated 23.06.2010 endorsed the deletion of the area approved by the Forest Settlement Officer after acknowledging the rights of the villagers in response to the areas notified under Section 4 of the Act, wherein condition No. '2' read as *"None of the deleted area will be allowed to be used for mining without obtaining approval under the Forest (Conservation) Act, 1980"*.

51. The petitioner, M/s ABG Cement Ltd., for deletion of the said condition, sought intervention of the Apex Court and under the order dated 22.07.2011. While accepting the request of the State of Gujarat for deletion of the area notified under Section 4 of the Forest Act as justified, no final opinion was expressed with regard to the condition No. '2' imposed by the CEC, specifically in view of the stand of the State Government that no lease had formally been granted to ABG Cement Ltd. in any of the areas notified under Section 4 of the Act and later deleted.

52. The Apex Court had noticed the stand of the MoEF&CC in its letter dated 07.01.2010 therein about the request made by the State of Gujarat for deletion of the area while granting the aforesaid relief. However, on the question of deletion of condition No. '2' in the approval granted by the CEC dated 23.06.2010, the petitioner had been permitted to move application before the MoEF&CC seeking approval for grant of lease and for permission under the Forest (Conservation) Act' 1980 and also to challenge the condition No. '2', if

¹ I.A.NOS.3722 IN IA 2881 & 3026-3027



advised. It was submitted by the learned Senior Counsel that the Apex Court had kept all contentions open to be raised before the MoEF&CC while granting opportunity to the petitioner to approach the Apex Court again.

53. The submission, thus, is that when the petitioner approached the Apex Court, again by filing the intervenor application No.3722 for direction / clarification of the order dated 07.05.2010 / 22.07.2010, it was noticed therein, in the order of disposal of the said application dated 08.09.2016, that the ABC Cement Ltd. had moved application dated 20.08.2011 under Section 3 of the Forest (Conservation) Act' 1980 for direction / clarification / exemption under the provisions of the Forest (Conservation) Act' 1980 and the MoEF&CC had not taken any decision on the same and hence, the petitioner was constrained to approach the Apex Court.

54. It is submitted that the application dated 20.08.2011 before the MoEF&CC was filed by way of abundant caution seeking approval under the provisions of the Forest (Conservation) Act' 1980 though the said provisions does not apply to the subject land admeasuring 364.22 Hectares when it ceased to be the forest land.

55. Even the Apex Court has noted in the order dated 08.09.2016 that only in case an individual was desirous of using forest land for non-forest purposes, permission under Section 2 of the Forest (Conservation) Act' 1980 was imperative. However, in the given situation, where the State Government land had sought deletion of the declared land as



reserved forest and when the land originally mentioned under Section 4 notification was deleted, then clearance under Section 2 of the Forest (Conservation) Act' 1980 would be pre-requisite condition for use of said land for non-forest purpose, only and only if the deleted land was forest area and not otherwise.

56. The Apex Court has, further, noticed the contention of the learned counsel for the applicant ABG Cement Ltd. therein that the area of 364.22 Hectares, which was sought to be deleted from the area notified under Section 4 of the Forest Act, did not actually remain a forest land and, as such, the clearance as mandated under Section 2 of the Forest (Conservation) Act' 1980 was not required.

57. Having considered the said arguments, the Apex Court had further taken into consideration the order of the Forest Settlement Officer dated 09.11.1995, which expressly pertained to the area of 364.22 hectares of the subject land, wherein based on the inquiry conducted by the Forest Settlement Officer, it was recorded that there was a village settlement in the area. Further reference therein is of the order dated 23.08.2016 of the Forest and Environment Department of the State of Gujarat, wherein it is mentioned that consequent to the due process of settlement proceedings and the Forest Settlement report, the entire area of 364.22 Hectares, declared under Section 4 of the Forest Act, not being recommended as forest under Section 20, and later deleted from Section 4 notification, no further procedure for declaring the said area under Section 20 of the Forest Act was required.



58. Attention of the Court is invited to the contents of the order dated 08.09.2016 of the Apex Court, wherein based on the order dated 23.08.2016 of the Forest and Environment Department of the State of Gujarat, it was recorded that on completion of the inquiry and acceptance of Forest Settlement report dated 09.11.1995, entire area of 364.22 Hectares of Nanibar village of Kutch district (subject land) initially declared under Section 4 not being recommended to be fit for declaring under Section 20, owing to the reasons recorded in the forest settlement report, has been deleted from notification under Section 4 and, thus, be reverted back to its original status of revenue land.

59. It is pointed out that in view of the aforesaid report of the Forest Settlement Officer dated 09.11.1995 and the order of the Forest and Environment Department of the State of Gujarat dated 23.08.2016, the Apex Court had concluded therein that, **“the release of area measuring 364.22 Hectares, which is the subject matter of consideration, is clear.”**

60. It was further recorded therein on a collective reading of Sections 3 and 4 of the Forest Act; that in case of deletion of an area, which was proposed to be declared as a reserved forest, the area so deleted will be reverted to the original nomenclature of the said area, i.e. the nomenclature which the land had prior to the issuance of the notification under Section 4 of the Forest Act.



61. Considering Section 3 of the Forest Act, it was observed therein that it is apparent that if the land notified under Section 4 was not a forest land but waste land, or some other kind of land over which Government has proprietary rights, on the deletion of the area notified under Section 4, such land would stand restored to its original nomenclature; as forest land or alternatively to the type of land, such as waste land etc. over which the Government has proprietary rights. In the aforesaid category of land, no clearance contemplated under Section 2 of the Forest (Conservation) Act, 1980 can be insisted on. It was also observed therein that it is only with reference to a reserved forest land, or land which is notified for being declared as a reserved forest, or forest land, that a clearance as contemplated under Section 2 of the Forest (Conservation) Act, 1980, is required.

62. Thus, while disposing of the interlocutory application filed by the petitioner Company, namely ABG Cement Ltd., it was provided by the Apex Court that the concerned authority shall, in the first instance, determine the nomenclature of the land deleted from the notification issued under Section 4 of the Indian Forest Act, 1927, prior to the notification. And only If it emerged, that the subject land was a forest land, then and then alone, the concerned competent authority will be required to determine, whether permission should be granted to the applicant / petitioner ABG Cement Ltd. to carry on non-forest operations, namely, for conducting limestone mining. However, if the released land was originally not a forest land, no forest clearance would be required.



63. The submission of the learned Senior Counsel for the petitioner, thus, is that in view of the said observation made by the Apex Court and the facts recorded therein that the Forest and Environment Department of the State of Gujarat passed an order dated 23.08.2016 reverting the subject land to its original status of being revenue land, there cannot be a quarrel that the subject land was not a forest land originally and was kept aside only for declaration as a reserved forest under Section 4 of the Forest Act, which was later deleted from the said notification. The subject land having been restored to its original nomenclature of being a revenue land, in essence, no further permission was required to carry on mining operations, under Section 3 of the Forest (Conservation) Act' 1980.

64. It is contended that the petitioner had approached the Apex Court by way of an abundant caution so as to clarify the said position as liberty was already reserved with the petitioner in the previous order dated 22.07.2011 passed by the Apex Court.

65. It was urged that once the Apex Court in the order dated 08.09.2016 had directed the competent authority to take a final decision on the pending application dated 20.08.2011 of the petitioner, the then ABG Cement Ltd. under Section 3 of the Forest (Conservation) Act' 1980, categorically providing that the competent authority would be required to determine the nomenclature of the land deleted from the notification issued under Section 4 of the Forest Act, considering its nomenclature prior to the notification, no exception can be taken by respondent No.1 to the order of grant dated 08.01.2017 to the



nomenclature of the subject land, that too when no decision was taken.

66. The learned Senior Counsel for the petitioner would vehemently argue that the concerned competent authority of the MoEF&CC of the Government of India is guilty of non-compliance of the directions contained in the judgment and order dated 08.09.2016 which obliged it to decide the petitioner's application. The stand taken by the respondent No.1 in its affidavit dated 01.11.2025 relying upon the conditions in the order dated 31.07.2012 issued by the MoEF&CC, approving deletion subject to the condition therein and the Government of Gujarat notification dated 05.02.2013 mandating that none of the deleted areas will be allowed to be used for mining without obtaining prior approval under the Forest (Conservation) Act' 1980, to submit that prior approval was pre-requisite is wholly misconceived.

67. The contention is that the aforesaid two orders were relevant for transitory period and after deletion of the land in question from the notification under Section 4 of the Forest Act, having been reverted to its original position being a revenue land, there was no question to agitate the issue requiring prior approval under the Forest (Conservation) Act' 1980, inasmuch as, the provisions of the said enactment would not be applicable.

68. The contention, thus, is that the petitioner had already approached the Industries and Mines Department, Government of Gujarat for granting the mining lease for the balance area of



300 Hectares by writing an application on 11.10.2012, after the Central Government approved deletion of the subject land vide order dated 31.07.2012 issued by the MoEF&CC.

69. After grant of letter of intent as early as on 26.03.1998, the matter for grant of mining lease for the balance area remained pending only because of the said area being notified under Section 4 of the Forest Act. However, when everything was sorted out with the deletion of the subject land under Section 4 and the order dated 23.08.2016 passed by the Forest and Environment Department of the State of Gujarat and the observations and directions in the judgment and order dated 08.09.2016 of the Apex Court in IA No.3722 (for declaration / clarification) filed by the petitioner, there remained no legal impediment in the matter of grant of mining lease in favour of the petitioner even after enforcement of the Amendment Act No.10 of 2015 w.e.f. 12.01.2015.

70. It was urged that the delay absolutely had been caused on the part of the State authorities. There is no question of ineligibility being attracted by virtue of Section 10A(1) of the Act' 1957, inasmuch as, with the letter of grant issued by the State Government on 08.01.2017, right accrued in favour of the petitioner to seek execution and registration of the lease deed, by fulfilling the conditions therein. It is not the case of the respondents that there is a failure on the part of the the petitioner in fulfilling the conditions of the letter of grant dated 08.01.2017, and the execution and registration of mining lease deed could not be made on account of any inaction or non-performance of the requirements by the



petitioner. Rather, in the instant case, the letter of grant dated 08.01.2017, was issued by the State authorities at the fag end of the expiry of the period of two years prescribed under Section 10A(2)(c) of the Act' 1957 as inserted by the Act No.10 of 2015.

71. The petitioner rushed to the State authorities for fulfillment of the requirement post-grant as per Rule 8 of the Rules' 2016. The formalities of furnishing the performance bank guarantee, signing of a mine development and production agreement with the State Government in the specified format and the submission of revised mining plan could not be completed prior to 11.01.201, because of the short period of two days given to the petitioner.

72. The categorical case of the petitioner that the order dated 08.01.2017 of granting mining lease was communicated to the petitioner on 09.01.2017, giving only two days time to complete the process of execution and registration of the lease deed cannot be disputed by the respondents. In spite of best efforts made by the petitioner, the formalities for execution of the lease deed could not be completed on or before 11.01.2017. However, the petitioner had deposited Rs.10,000/- towards security deposit with the authority vide Challan dated 16.01.2017. Where after, the State authorities did not permit the petitioner to take further steps to execute and register the lease deed.

73. It was argued that in the present case, the petitioner is not claiming any vested or fundamental right to seek



execution of the lease deed or even there is no question of estoppel. The present is a case where the grant of mining lease made in favour of the petitioner vide letter of grant dated 08.01.2017 is saved by Section 10A(c) of the Act' 1957 (with Amendment Act of 2015.), the statutory scheme itself.

74. It was submitted that Section 10A(2) is an exception to sub-section (1) of Section 10A, inasmuch as, it saves the right of the applicants to seek grant of mining lease subject to fulfillment of the conditions therein. In the case of the petitioner, all the requirement of Section 10A(2)(c) had been fulfilled and the letter of grant was issued within the period of two years from the date of commencement of the Amendment Act, i.e. before 11.01.2017. Only steps remained that of fulfillment of requirement of the letter of grant as per Rule 8(2) of the Rules' 2016 framed under the Act. Forfeiture of the right to seek execution of the lease deed as per sub-rule (4) of Rule 8 cannot be attracted in view of the peculiar facts and circumstances of the present case, where the petitioner is not responsible for non-completion of the formalities.

75. Placing reliance upon the decision of the Apex Court in **Kusheshwar Prasad Singh v. State of Bihar**², it was argued by the learned Senior Counsel for the petitioner that the Latin maxim *commodum ex injuria sua nemo habere debet* (no party can take undue advantage of his own wrong) is squarely attracted in the facts of the present case. The elementary principles of the said maxim of law is fully recognized in courts of law and of equity, and, indeed, admits

² (2007) 11 SCC 447



of illustration from every branch of legal procedure. The observations made in paragraph No. '16' of the said decision pressed before us, read as under:-

“16. It is settled principle of law that a man cannot be permitted to take undue and unfair advantage of his own wrong to gain favourable interpretation of law. It is sound principle that he who prevents a thing from being done shall not avail himself of the non-performance he has occasioned. To put it differently, “a wrongdoer ought not to be permitted to make a profit out of his own wrong”.”

76. Reliance is placed on various decisions to substantiate his submissions that the date 11.01.2017 cannot be treated as sacrosanct in the peculiar facts and circumstances of the present case, as follows:-

- i. State of Rajasthan V. Shree Cement Ltd.³
- ii. Kamlesh Metacast Pvt. Ltd. v. State of Rajasthan⁴
- iii. State of Rajasthan V. Kamlesh Metacast Pvt. Ltd. [Civil Special Application No.754 of 2021 in S.B. Civil Writ Petition No.13426 of 2020 decided on 03.01.2022]
- iv. Wonder Cement Ltd. Vs. State of Rajasthan⁵
- v. State of Rajasthan & Others Vs. Shree Cement Limited, Order dated 22.01.2019 passed in D.B. **Special Appeal Writ No. 26/2019** by Rajasthan High Court.
- vi. State of Rajasthan and Others Versus Ojaswi Marbles and Granites Pvt. Ltd. and Others⁶
- vii. State of Rajasthan & Others Vs. UltraTech Cement Limited and Ors., Order dated 31.03.2023 passed in D.B.

³ 2022 SCC Online Raj 3543

⁴ 2021 SCC Online Raj 735

⁵ 2017 SCC Online Raj 4470

⁶ 2021 SCC OnLine Raj 4226



Special Appeal (Writ) No. 987/2021 in S. B. Civil Writ
Petition No. 356/2017 by Rajasthan High Court.

viii. Indocil Silicons Pvt. Ltd. Vs. Union of India and
Ors.⁷

ix. Smt. A.V. Shakuntala Vs. The Union of India,
Ministry of Mines and Others⁸

x. V. Velmurugan Vs. The State of Tamil Nadu and
Ors.⁹

xi. Gujarat Pottery Works Vs. B.P. Sood, Controller of
Mining Leases for India¹⁰

xii. State of West Bengal and Another V. Chiranjilal
(Mineral) Industries of Bagandih and Another¹¹

xiii. Heidelberg Cement India Limited Vs. Union of
India-Order dated 11.05.2018 passed by Hon'ble Gujarat
High Court passed in **Civil Application No.01 of 2018**
in Special Civil Application No.417 of 2017.

xiv. Heidelberg Cement India Limited Vs. Union of
India-Order dated 27.12.2019 passed by Hon'ble Gujarat
High Court passed in **Special Civil Application**
No.417 of 2017.

xv. Heidelberg Cement India Limited Vs. Union of
India-Order dated 28.01.2020 passed by Hon'ble Gujarat
High Court passed in Special Civil Application No.417 of
2017.

⁷ 2022 SCC OnLine Kar 1852

⁸ ILR 2017 KAR 16

⁹ AIR 2020 Mad 193

¹⁰ AIR 1967 SC 964

¹¹ 2023 SCC OnLine SC 1149



77. Further, relying upon the decision of the Apex Court in the **State of Karnataka V. BL Rani Samyuktha & Anr.**¹², it was argued that the Apex Court had issued direction therein to Government to consider the application for mining lease where even in a case where even the stage for completion of conditions mentioned in the approval letter of the Central Government was not complete. In case of the present petitioner, on the other hand, right had been accrued with the grant of approval and only formalities of execution of the lease deed remained. There cannot be any frustration or forfeiture of right to seek execution of lease deed, when there was no failure on the part of the petitioner.

78. Reliance has also been placed on the decisions of the Division Bench of this Court in the cases of **Heidelberg Cement India Limited Vs. Union of India** passed in Special Civil Application No.417 of 2017 dated 11.01.2017, 11.05.2018 and 27.12.2019 in the cases, wherein only the letter of intent was issued but the lease deed could not be executed within the time frame on account of pendency of the application for environmental clearance before the competent authority and further notification issued by the Ministry of Mines on 04.01.2017. The submission is that even in such cases, where environmental clearance was not granted, subject to grant of said certificate before the commencement of the mining activity, directions was issued to consider the case of the petitioners for grant of mining lease.

¹² Civil Appeal No.3604 of 2023 decided on 10.05.2023



79. The learned Senior Counsel for the petitioner would vehemently urge that the present is one of such cases, where the Constitution Court is required to intervene to set right the wrong committed not only by the State respondents in protracting the matter of grant of lease for no reason or justification, but also by the Central Ministry (MoEF&CC), which is guilty of non-compliance of the order of the Apex Court dated 08.09.2016.

80. Mr.Kirtiman Singh, the learned Senior Advocate assisted by Mr.Harsheel D. Shukla, the learned counsel for the respondent No.1, namely the Union of India placing the affidavit dated 01.11.2025, contents of which have been noted hereinbefore, would vehemently submit that in view of sub-rule (4) of Rule 8 of the Rules' 2016, it was mandated that the lease deed was executed and registered on or before 11.01.2017. The forfeiture of right to seek execution of the lease deed is automatic and as a consequence thereof, the letter of grant dated 08.01.2017 would loose its legal efficacy. The letter of grant contains conditions as per sub-rule (2) of Rule 8 and in view of sub-rule (3), it was incumbent upon the petitioner to furnish the performance bank guarantee and complete the formalities for the purpose of execution and registration of the lease deed on or before 11.01.2017. The consequence of failure provided under sub-rule(2) of Rule 8 is the forfeiture of right of the petitioner under Clause (c) of sub-section(2) of Section 10A. The date 11.01.2017 is sacrosanct. No pending application can be adjudicated after the said date, in view of the statutory mandate, which required closure of the old regime.



81. No writ in contravention of the statutory provision can be issued, inasmuch as, no estoppel can operate against the statute. The grant of lease deed included different stages of according right to a lessee for mining lease and all the stages were required to be concluded before the cut off date, i.e. 11.01.2017.

82. Reliance is placed on the decision of the Karnataka High Court in the case of **BL Rani Samyuktha**¹² to submit that no directions can be passed by this Court for grant of mining lease.

83. Placing reliance on the decision of the Delhi High Court in the case of **Arcelormittal India (P) Ltd. v. Union of India**¹³ and the order dated 06.06.2025 in Writ Petition (Civil) No.4160 of 2024 in the case of **Arcelormittal India (P) Ltd. v. Indian Bureau of Mines**, it was argued that the statutory law provided the cut off date, i.e. 11.01.2017 as sacrosanct and no mining lease can be executed after the said date.

84. The learned Senior Counsel for the respondent No.1 has further relied upon the following decisions to substantiate his arguments:-

- i. State of T.N. v. Hind Stone¹⁴
- ii. State of Rajasthan v. Sharwan Kumar Kumavat¹⁵
- iii. Monnet Ispat & Energy Ltd. v. Union of India¹⁶

¹³ (2024) SCC OnLine (Del) 1401

¹⁴ (1981) 2 SCC 205

¹⁵ (2023) 20 SCC 747

¹⁶ (2012) 11 SCC 1



iv. Larsen & Toubro Ltd. v. Union of India¹⁷

v. Coromandel Mining & Exports Pvt. Ltd. v. Union of India¹⁸

vi. Ashapura Minechem Ltd. v. Indian Bureau of Mines dated 06.06.2025 in **W.P. (C) 4160 of 2024**.

85. Ms.Hetal Patel, the learned Assistant Government Pleader for the state has adopted the arguments of the learned Senior Counsel appearing for the respondent No.1, to rebutt the contentions of the petitioner herein seeking for execution of the mining lease deed.

ANALYSIS

86. Having heard the learned counsels for the parties and perused the record, the undisputed factual position emerging from the record is:-

I. A prior approval (in-principle approval) under the first proviso to sub-section (1) of Section 5 with reference to the application of the petitioner dated 22.05.1995 for limestone mining lease, was granted by the Central Government vide communication dated 01.12.1997 for area admeasuring 730.60 Hectares of land for a lease period of 30 years.

II. Pursuant thereto, on 26.03.1998, the letter of intent was issued by the Government of Gujarat subject to the conditions therein:-

¹⁷ 2023 SCC OnLine Ori 706

¹⁸ 2015 SCC OnLine Hyd 452



“

- i. To submit the Mining Plan duly approved / certified by the Indian Bureau of Mines, Udaipur (Rajasthan).
 - ii. To Clearance Certificate from MoEF pursuant to their circular dated 27.01.1994.
 - iii. Prospecting charges towards the expenses incurred by the Govt. for tests.
 - iv. To follow conditions and Instructions as mentioned in the Site Clearance from the Govt. dated 11.11.1997 vide letter bearing ref. no. J-11076/8/97/IA-(M)
 - v. To follow the conditions as laid down and as applicable as per MHRD Act-1 (A) and MCR-1960 also Forest Conservation Act 1980.
- “

III. The mining plan for the entire area of 730.60 Hectares was approved on 19.02.1999 under the Act' 1957. Further, in terms of the notification dated 10.04.2003 of the Government of India, in the year 2007, the mining plan dated 19.02.1999 was reviewed albeit before execution of any mine lease.

IV. On 28.06.2011, the environmental clearance was granted by the Ministry of Environment and Forest for the project for the entire lease area of 730.60 Hectares, in accordance with the EIA Notification 2006, subject to implementation of the conditions of environmental safeguard mentioned therein.

V. On 04.12.2012, the mining lease for Phase-I area 336.1843 Hectares (out of total 730.60 Hectares) was executed. However, on account of the issue relating to the



nomenclature of the remaining land included in the Section 4 notification as forest land, no mining lease was executed at that point of time.

VI. By the judgment and order dated 22.07.2011, the Apex Court had allowed the application filed by the State Government for deletion of forest land from the notification under Section 4 of the Forest Act, which included the subject land, in view of the own stand of the Ministry of Environment and Forest that the request made by the State of Gujarat for deletion of the area was granted.

VII. The petitioner also filed intervenor application seeking approval for grant of lease for remaining area challenging the condition No. '2' mentioned in the letter of the Central Government, as noted hereinbefore. However, the Apex Court had disposed of the intervenor application of the petitioner with the observation that it is for the Ministry of Environment and Forest to consider the same.

VIII. On 20.08.2011, the petitioner filed application seeking appropriate permission / clarification / exemption, which remained undecided till date inspite of the categorical directions issued by the Apex Court in the judgment and order 08.09.2016 in the subsequent intervenor application filed by the petitioner for directions and clarification.

IX. On 31.01.2012, the Government of India approved deletion of the subject land from notification under Section 4 of the Indian Forest Act, subject to the conditions



including prior approval for allowing the land to be used for mining. The petitioner submitted the request to the Industries and Mines Department, Government of Gujarat vide writing letters dated 11.10.2012 and 05.11.2012 for grant of mining lease for the balance area of approximately 300 Hectares.

X. On 21.01.2013, the Industries and Mines Department, State Government requested the Deputy Collector, Kachchh to forward the proposal for getting approval under the Forest (Conservation) Act' 1980 regarding allotment of the remaining area.

XI. On 05.02.2013, notification was issued by the State Government that none of the deleted areas will be allowed to be used for mining without obtaining prior approval under the Forest (Conservation) Act' 1980.

XII. In view of the above, on another intervenor application filed by the petitioner, the Apex Court by judgment and order dated 08.09.2016 directed the concerned authority of the Central Ministry to determine the nomenclature of the land while observing that if the subject land was originally not a forest land, no forest clearance was needed. It was clarified by the Apex Court therein that only if the subject land was found to be forest land originally, then and then only the concerned competent authority would further consider forest clearance.



XIII. The order dated 08.09.2016 of the Apex Court, in IA No.3722 in IA No.2881 and 3026 - 3027 in Writ Petition (Civil) No.202 of 1995, filed by the petitioner, categorically records that the Forest and Environment Department of the State of Gujarat, on 23.08.2016, had released the area admeasuring 364.22 Hectares, of the subject land, consequent to completion of the legal process of forest settlement and right exemption, appellate procedure and acceptance of Forest settlement report dated 09.11.1995, holding that the subject land be reverted to its original status of revenue land.

XIV. There is no dispute about the fact that the original nomenclature of the subject land was revenue land and it was originally not a forest land. The dispute pertaining to nomenclature of the subject land as a forest land and the necessity for seeking approval of the Central Government under the Forest (Conservation) Act' 1980, arose only because of the notification under Section 4 of the Indian Forest Act' 1927 issued by the Central Government notifying the lands of Village Naniber, Taluka Abdasa, District Bhuj - Kachchh as forest land, which was later released / revoked.

XV. It is in these facts and circumstances of the case, that after getting the order from the Apex Court, the petitioner on 23.09.2016 requested the Government of Gujarat to issue the order granting limestone mining lease in his favour for the balance area of 300.6957 Hectares.



XVI. On 03.01.2017, the Geologist in the Office of the Commissioner of Geology and Mining, proposed grant of mining lease and on 08.01.2017, the grant order was issued which was intimated to the petitioner on 09.01.2017, only.

XVII. With the execution of the mining lease as per the mining plan dated 19.12.1999 submitted for the entire area of 730.60 Hectares, there was a requirement to review the mining plan for Phase - II area of 300.6957 Hectares after deletion of the area reserved for Geopark and the opportunity to submit a mine closure plan under Rule 23(A) with financial assurance as contemplated under Rule 23(F), would then arise.

XVIII. As per the case of the petitioner, the question of fulfillment of condition No. '3(k)' of the grant order dated 08.01.2017 pertaining to the financial assurance under Rule 23(F) of the Minerals Conservation and Development Rules' 1988, would arise only when the Indian Bureau of Mines takes up the mining plan for review. However, by the notification dated 27.02.2017, with the supersession of the said rule vide Mineral Conservation and Development Rules' 2017, the requirement of mine closure plan under the sub-rule (1) of Rule 27 would not be applicable by virtue of the Second proviso to the said Rule, in case where performance security is furnished. The petitioner is liable either to furnish performance security or financial assurance.

XIX. As regards the condition Nos. 3(f) and 3(g), about the submission of accurate map of the area sanctioned



giving description of the situation and boundaries duly attested by the District Inspector of Land Records and the requirement to get demarcation of the area by the Collector; and also the payment of performance security as per Rule 8(3)(a) of the Rules, 2016, the said requirements could not be fulfilled for no fault of the petitioner.

XX. It is also the case of the petitioner that when mining plan was approved for the entire area of 730.60 Hectares, there was no provision for tendering performance security. The requirement for tendering performance security in respect of non-auction lease land was introduced vide Rule 8(3) of the MCR Rules' 2016 on 04.03.2016 for the first time. Moreover, there was a deduction from the remaining Phase-II area by the respondent for Geopark and the balance area was left out to 300.6957 Hectares. The performance security under Rule 8(3)(a) of the Rules' 2016 was to be calculated as 0.50% of the value of estimated mineral resources. It was impossible for the petitioner to be aware of the mineral resources available in Phase - II area of 300.6957 Hectares, inasmuch as, such exercise was to be conducted by the respondent No.2 to cull out the quantum of performance security.

XXI. The petitioner had already given the undertaking on 11.01.2017 itself by writing the letter to the Geologist, Commissionerate of Geology and Mines, Bhuj - Kachchh that it was ready to pay the required stamp duty and registration charges. Along with the said letter, the



petitioner also submitted the copy of the environmental clearance; the copy of the approval letter of mining plan from Indian Bureau of Mines over an area of 730.60 Hectares; the copy of village map with the demarcation for lease deed execution over the remaining area admeasuring 300.6957 Hectares. The petitioner cannot be held responsible for its inability to furnish the performance security on or before 11.01.2017.

XXII. The case of the petitioner is that it had complied with the conditions to the best of its ability and since only two days were given, non-compliance of any of the conditions of the letter of grant, which were procedural compliances, cannot come in the way of the petitioner depriving it of its rights accrued in pursuance to the issuance of the grant order dated 08.01.2017.

87. In view of the above-noted peculiar and undisputed facts and circumstances of the instant case, the question is as to whether the cut off date 11.01.2017 can be treated as sacrosanct as asserted by the respondents and the petitioner be held ineligible under Section 10A of the Amendment Act of 2015. The further question is as to whether any direction issued by this Court to consider the case of the petitioner for execution and registration of the lease deed in terms of the grant order dated 08.01.2017 would be in violation of the statutory scheme or in other words, any directions issued by this Court would amount to compel the State authorities to do acts contrary to the statutory provision.



88. At this stage, it would be profitable to note the provisions of Section 10A of the MMDR Act' 1957 and Rule 8 of the MCR Rules' 2016.

"10A. Rights of existing concession holders and applicants.—(1) All applications received prior to the date of commencement of the Mines and Minerals (Development and Regulation) Amendment Act, 2015, shall become ineligible.

(2) Without prejudice to sub-section (1), the following shall remain eligible on and from the date of commencement of the Mines and Minerals (Development and Regulation) Amendment Act, 2015:—

(a) applications received under section 11A of this Act;

(b) where before the commencement of the Mines and Minerals (Development and Regulation) Amendment Act, 2015 a reconnaissance permit or prospecting licence has been granted in respect of any land for any mineral, the permit holder or the licensee shall have a right for obtaining a prospecting licence followed by a mining lease, or a mining lease, as the case may be, in respect of that mineral in that land, if the State Government is satisfied that the permit holder or the licensee, as the case may be,—

(i) has undertaken reconnaissance operations or prospecting operations, as the case may be, to establish the existence of mineral contents in such land in accordance with such parameters as may be prescribed by the Central Government;

(ii) has not committed any breach of the terms and conditions of the reconnaissance permit or the prospecting licence;

(iii) has not become ineligible under the provisions of this Act; and

(iv) has not failed to apply for grant of prospecting licence or mining lease, as the case may be, within a period of three months after the expiry of reconnaissance permit or prospecting licence, as the case may be, or within such further period not exceeding six months as may be extended by the State Government;

Provided that for the cases covered under this clause including the pending cases, the right to obtain a prospecting licence followed by a mining lease or a mining lease, as the case may be, shall lapse on



the date of commencement of the Mines and Minerals (Development and Regulation) Amendment Act, 2021:

Provided further that the holder of a reconnaissance permit or prospecting licence whose rights lapsed under the first proviso, shall be reimbursed the expenditure incurred towards reconnaissance or prospecting operations in such manner as may be prescribed by the Central Government.

(c) where the Central Government has communicated previous approval as required under sub-section (1) of section 5 for grant of a mining lease, or if a letter of intent (by whatever name called) has been issued by the State Government to grant a mining lease, before the commencement of the Mines and Minerals (Development and Regulation) Amendment Act, 2015, the mining lease shall be granted subject to fulfilment of the conditions of the previous approval or of the letter of intent within a period of two years from the date of commencement of the said Act:

Provided that in respect of any mineral specified in the First Schedule, no prospecting licence or mining lease shall be granted under clause (b) of this subsection except with the previous approval of the Central Government.

(d) in cases where right to obtain licence or lease has lapsed under, clauses (b) and (c), such areas shall be put up for auction as per the provisions of this Act.

Provided that in respect of the minerals specified in Part B of the First Schedule where the grade of atomic mineral is equal to or greater than the threshold value, the mineral concession for such areas shall be granted in accordance with the rules made under section 11B.

"8. Rights under the provisions of clause(c) of sub-section (2) of section 10A.- (1) The applicant in whose favour:

(a) the State Government has issued a letter of intent (by whatever name called) in writing before January 12, 2015, for grant of a mining lease for minerals not specified in the First Schedule to the Act; or

(b) the Central Government has communicated the previous approval in writing before January 12, 2015, under sub-section (1) of section 5, for grant of a mining lease for



minerals specified in Part C of the First Schedule to the Act, shall submit a letter of compliance to the State Government, of the conditions mentioned in the letter of intent or the conditions mentioned in the previous approval granted by the Central Government, as the case may be; and the State Government shall send an acknowledgement of receipt of the letter of compliance to the applicant in Schedule II within a period of three days of receipt thereof.

(2) After receipt of letter of compliance under sub-rule (1), the State Government shall issue an order for grant of the mining lease within a period of sixty days from the date of receipt of such letter subject to verification of fulfilment of the conditions mentioned in the letter of intent or previous approval of the Central Government, as the case may be:

Provided that in case the conditions as mentioned in the (i) letter of intent issued by the State Government, or (ii) previous approval granted by the Central Government are not fulfilled, the State Government shall, after giving the applicant an opportunity of being heard and for reasons to be recorded in writing and communicated to the applicant within a period of sixty days from the date of receipt of letter of compliance, refuse to grant a mining lease for non-compliance of conditions mentioned in the letter of intent or the previous approval of the Central Government, as the case may be.

(3) Upon issuance of an order of grant of mining lease under sub-rule (2), the applicant shall:

(a) furnish a performance security to the State Government in the form of a bank guarantee in the format specified in Schedule IV or as a security deposit for an amount equivalent to 0.50% of the value of estimated resources, which may be invoked by the State Government as per the terms and conditions of the Mine Development and

Production Agreement, published by the Government of India in the Ministry of Mines, vide Part I, Section-I of the Gazette of India, dated the 2nd July, 2015, and the mining lease deed. The performance security shall be adjusted every five years to correspond to 0.50% of the reassessed value of estimated resources; and

(b) sign a Mine Development and Production Agreement with the



State Government in the format specified by the Central Government after compliance of conditions specified in this sub-rule.

(4) Where an order for grant of mining lease has been issued under sub-rule (2), the mining lease shall be executed with the applicant in the format specified in Schedule VII and registered on or before 11th January, 2017, failing which the right of such an applicant under clause (c) of sub-section (2) of section 10A for grant of a mining lease shall be forfeited and in such cases, it would not be mandatory for the State Government to issue any order in this regard.

(5) The State Government may, for reasons to be recorded in writing and communicated to the applicant, reduce the area applied for at the time of grant of the mining lease.

(6) The date of the commencement of the period for which a mining lease is granted shall be the date on which a duly executed mining lease deed is registered."

89. There cannot be a dispute that the execution of the lease deed on completion of the requirement of Rule 8(3) upon issuance of an order of grant of mining lease as per sub-rule (2) of Rule 8, was not an empty formality. The order of grant could have been forfeited in case of failure of the applicant to get the lease deed executed upon completion of the requirement of sub-rule (3) of Rule 8, by virtue of sub-rule (4) of Rule 8.

90. According to Black's Law Dictionary (Ninth Edition), the word "forfeiture" means:- *"The divestiture of property without compensation; Or The loss of right, privilege, or property because of a crime, breach of obligation, or neglect of duty."*



91. In **STO v. Ajit Mills Ltd.**¹⁹, the Apex Court, while considering the words “any sum collected by the person by way of tax in contravention of Section 46 **shall be forfeited** to the State Government” occurring in Section 37(1)(a) of the Bombay Sales Tax Act’ 1959, and challenge to the forfeiture clause being bad, has noted the connotation word “forfeiture” in paragraph Nos. ‘18’ and ‘19’ as under:-

“18. Coming to ‘forfeiture’, what is the true character of a ‘forfeiture’? Is it punitive in infliction, or merely another form of exaction of money by one from another? If it is penal, it falls within implied powers. If it is an act of mere transference of money from the dealer to the State, then it falls outside the legislative entry. Such is the essence of the decisions which we will presently consider. There was a contention that the expression “forfeiture” did not denote a penalty. This, perhaps, may have to be decided in the specific setting of a statute. But, speaking generally, and having in mind the object of Section 37 read with Section 46, we are inclined to the view that forfeiture has a punitive impact. Black's Legal Dictionary states that “to forfeit” is “to lose, or lose the right to, by, some *error, fault, offence or crime*”, “to incur a penalty”. “Forfeiture”, as judicially annotated, is “a punishment annexed by law to some illegal act or negligence . . .”. “something imposed as a punishment for an offence or delinquency”. The word, in this sense, is frequently associated with the word “penalty”. According to *Black's Legal Dictionary*,

The terms “fine”, “forfeiture”, and “penalty”, are often used loosely, and even confusedly : but when a discrimination is made, the word “penalty” is found to be generic in its character, including both fine and forfeiture. A “fine” is a pecuniary penalty, and is commonly (perhaps always) to be collected by suit in some form. A “forfeiture” is a penalty by which one loses his rights and interest in his property.

More explicitly, the U.S. Supreme Court has explained the concept of “forfeiture” in the context of statutory construction. Chief Justice Taney, in the *State of Maryland v. Baltimore & Ohio RR Co.* [11 L Ed 714, 722] observed :

¹⁹ (1977) 4 SCC 98



“And a provision, as in this case, that the party shall forfeit a particular sum, in case he does not perform an act required by law, has always, in the construction of statutes, been regarded not as a contract with the delinquent party, but as the punishment for an offence. Undoubtedly, in the case of individuals, the word forfeit is construed to be the language of contract, because contract is the only mode in which one person can become liable to pay a penalty to another for breach of duty, or the failure to perform an obligation. In legislative proceedings, however, the construction is otherwise, and a forfeiture is always to be regarded as a punishment inflicted for a violation of some duty enjoined upon the party by law ; and such, very clearly, is the meaning of the word in the act in question.”

19. The same connotation has been imparted by our Court too. A Bench has held [*Bankura Municipality v. Lalji Raja & Sons*, (1953) 1 SCC 392 : AIR 1953 SC 248, 250 : 1953 SCR 767 : 1953 Cri LJ 1101] :

“According to the dictionary meaning of the word ‘forfeiture’ the loss or the deprivation of goods has got to be in consequence of a crime, offence or breach of engagement or has to be by way of penalty of the transgression or a punishment for an offence. Unless the loss or deprivation of the goods is by way of a penalty or punishment for a crime, offence or breach of engagement it would not come within the definition of forfeiture.”

This word “forfeiture” must bear the same meaning of a penalty for breach of a prohibitory direction. The fact that there is arithmetical identity, assuming it to be so, between the figures of the illegal collections made by the dealers and the amounts forfeited to the State cannot create a conceptual confusion that what is provided is not punishment but a transference of funds. If this view be correct, and we hold so, the legislature, by inflicting the forfeiture, does not go outside the crease when it hits out against the dealer and deprives him, by the penalty of the law, of the amount illegally gathered from the customers. The Criminal Procedure Code, Customs & Excise Laws and several other penal statutes in India have used diction which accepts forfeiture as a kind of penalty. When discussing the rulings of this Court we will explore whether this true nature of “forfeiture” is contradicted by anything we can find in Sections 37(1), 46 or 63. Even here we may reject the notion that a penalty or a punishment cannot be cast in the form of an absolute or no-fault liability but must be preceded by mens rea. The classical view that “no mens rea, no crime” has long ago been eroded and several laws in India and abroad, especially regarding economic crimes and departmental penalties, have created severe punishments even where the offences have been defined to exclude mens rea. Therefore, the contention that Section 37(1) fastens a heavy



liability regardless of fault has no force in depriving the forfeiture of the character of penalty."

92. The further observation on the expression "forfeiture" in paragraph No. '35' therein are relevant to be noted hereinunder:-

"35. The expression "forfeiture" may now be examined. For one thing, there is authority to hold that "shall be forfeited" means "liable to be forfeited", depending on the setting and the sense of the statute. Lord Porter, in *Attorney-General v. Parsons* [(1956) AC 421] observed, in the context of language suggestive of automatic forfeiture, negating such inference :

The strength of the opposite opinion rests upon the fact that "forfeiture" in Section 1(1) must, on the construction which I have adopted, mean "liable to forfeiture", whereas, as my noble and learned friend Lord Morton of Henryton points out in his opinion, which I have had an opportunity of reading, it bears the meaning of "forfeiture" and not liable to "forfeitures" in subsection (2)(iv). This is true, but the collocation is different. Admittedly the word "forfeited" may bear the meaning "liable to forfeiture" at the will of the person to whom the right of forfeiture is given and does not, in every case, imply automatic forfeiture." (p. 443)

"Lord Cohen, in the same judgment, considered it appropriate to read 'forfeiture' as meaning 'liable to be forfeited'. Although there was a conflict of opinion on this point, it is sufficient to state that such a construction is tenable....."

93. While saying so, in light of the language in Section 37(2) and Section 37 (3) of the statute therein, it was held therein by the Apex Court that since forfeiture therein required holding an inquiry and to make such an order by the Commissioner, as he thinks fit, the Commissioner was vested with the discretion to forfeit the whole or any lesser sum or none at all. In that sense, the words, "shall be forfeited", were given the meaning as "shall be liable to be forfeited", it was held therein that this significance of "forfeiture" as "liability



to forfeiture” saves the equity of the statute. The Commissioner must have regard to all the circumstances of the case, including the fact that amounts illegally collected had been returned to the purchasers to whom they belonged before passing the final order and that the forfeiture should operate only to the extent, and not in excess of the total collections less what has been returned to the purchasers. It was, thus, held that “Forfeiture is a penalty in its generic sense, but not a penalty in the specific signification in Section 37(1) and (4)” therein.

94. In the instant case, considering the dictionary meaning of the word “forfeiture”, which connotes “*the loss of right, privilege, or property because of a crime, breach of obligation, or neglect of duty.*”, coming to the expression “shall be forfeited” occurring in sub-rule (4) of Rule 8 of the MCR Rules’ 2016, considering the setting and stand of the Statute, it would be proper to give it a meaning “liable to be forfeited”, however, in light of the language of sub-rule (4) of Rule 8, it would not be mandatory for the State Government to issue any order in that regard.

95. Considering the dictionary meaning of the word “forfeiture”, meaning “loss of right because of breach of obligation” in light of the sentence, occurring in the sub-rule (4) of Rule 8 “failing which, the right of such an applicant under Clause (c) of sub-section (2) of Section 10A for grant of mining lease would be forfeited”, it can be discerned that with the issuance of the order of grant under sub-rule (2) of Rule 8 by the State Government, the applicant (petitioner herein) has



been conferred with the right to seek execution and registration of the mining lease, subject to fulfillment of its obligation to the requirements mentioned in sub-rule (3) of Rule 8.

96. Section 10A(2) inserted by Act No.10 of 2015 w.e.f. 12.01.2015 provide for saving of rights of the existing applicants and is an exception to sub-section (1) of Section 10A wherein all applications received prior to the date of Amendment Act' 2015, have been rendered ineligible.

97. The clause (c) of sub-section (2) of Section 10A, attracted in the present case, contemplates the following:-

- i. Where the Central Government has communicated previous approval under sub-section (1) of Section 5 for grant of mining lease; or
- ii. if the letter of intent (by whatever name called) has been issued by the State Government to grant mining lease before the commencement of the Amendment Act' 2015;
- iii. the mining lease shall be granted subject to fulfillment of conditions of the previous approval or of the letter of intent;
- iv. within a period of two years from the date of commencement of Act, i.e. on or before 11.01.2017.

98. In the instant case, all the requirement of clause (c) of sub-section (2) of Section 10A had been met or fulfilled much prior to the enactment of the Amendment Act' 2015 w.e.f.



12.01.2015. The only requirement in sub-section(2)(c) was to issue the letter of grant subject to fulfillment of conditions of the previous approval or the letter of intent within a period of two years, i.e. on or before 11.01.2017, which has also been fulfilled with the issuance of the letter of grant dated 08.01.2017, issued by the State Government, though on the verge of the expiry of the period of two years.

99. The words used in clause (c) of sub-section (2) of Section 10A “**shall be granted** subject to fulfillment of conditions...” cast a mandate upon the State Government to grant mining lease within a period of two years on or before 11.01.2017, where all conditions of the grant were fulfilled.

100. There is a delay absolutely on the part of the State Government in granting approval for the mining lease, inspite of the settlement of the dispute pertaining to the nomenclature of the subject land, after it was released from the notification under Section 4 of the Forest Act.

101. Moreover, a conjoint reading of Section 10A(2)(c) and Rule 8(4) of the Rules’ 2016, makes it evident that with the order for grant of mining lease having been issued under sub-rule (2) of Rule 8, a right had been accrued to the applicant under clause (c) of sub-section (2) of Section 10A for grant of mining lease, which may be forfeited or lost by the applicant on a breach of its obligations.

102. However, in the instant case, the forfeiture of the right for grant of mining lease accrued upon the petitioner herein by virtue of clause (c) of sub-section (2) of Section 10A in view



of the sub-rule(2) of Rule 8 will not be attracted in view of the facts and circumstances of the present case, where there is no breach of obligation or neglect of duty on the part of the petitioner.

103. For the fact that the order of grant issued on 08.01.2017 was served upon the petitioner only on 09.01.2017, the inability of the petitioner in completing the process for execution and registration of the mining lease deed inspite of best efforts made by it, would not result in attracting of the forfeiture clause occurring in Rule 8(4). Such a stipulation which defeats the accrued right of the petitioner on or before 11.01.2017 (for the mining lease granted) (within a period of two years of the date of enforcement of Amendment Act' 2015) for the default on the part of the State authorities, would itself be contrary to the legislative intent in incorporating Section 10A(2)(c) for saving the rights of those applicants, whose applications had been processed in accordance with law within the period of two years from the date of commencement of the Act' 2015.

104. The submission made by Mr.Kirtiman Singh, the learned Senior Advocate that the cut off date "11.01.2017" is sacrosanct and the forfeiture clause would apply automatically, irrespective of the question as to who was at fault, is unacceptable.

105. Apart from the bald assertions made in the affidavit of the respondent No.2 State Government and the respondent No.1, Union of India, that the Collector, Bhuj - Kachchh had



intimated that the performance security deposit had not been made on or before 11.01.2017, nothing much could be demonstrated before us to demolish the case of the petitioner that no fault or failure can be attributed to the petitioner for non-execution / registration of the mining lease. None of the decisions relied by the learned Senior Counsel for the respondent No.1 (Union of India), would of any benefit to the respondents, in the peculiar facts and circumstances of the present case. As is demonstrated before us, this Court, the other High Courts and even the Supreme Court had issued appropriate directions for consideration of the pending mining lease applications, depending upon the facts of each case before them, even after the cut off date, I.e. 11.01.2017.

106. We may also seek guidance from the observations in the decision of the Apex Court in **Bhushan Power & Steel Ltd. v. State of Odisha**²⁰, wherein while noticing the amendment in Section 11 and inserted provisions of Section 10A by Amendment Act' 2015, it was noted that:-

“22. Newly inserted provisions of the Amendment Act, 2015 are to be examined and interpreted keeping in view the aforesaid method of allocation of mineral resources through auctioning, that has been introduced by the Amendment Act, 2015. Amended Section 11 now makes it clear that the mining leases are to be granted by auction. It is for this reason that sub-section (1) of Section 10-A mandates that all applications received prior to 12-1-2015 shall become ineligible. Notwithstanding, sub-section (2) thereof carves out exceptions by saving certain categories of applications even filed before the Amendment Act, 2015 came into operation. Three kinds of applications are saved:

22.1. First, applications received under Section 11-A of the Act. Section 11-A, under new avatar is an exception to Section 11 which mandates grant of prospecting licence combining lease through

²⁰ (2017) 2 SCC 125



auction in respect of minerals, other than notified minerals. Section 11-A empowers the Central Government to select certain kinds of companies mentioned in the said section, through auction by competitive bidding on such terms and conditions, as may be prescribed, for the purpose of granting reconnaissance permit, prospecting licence or mining lease in respect of any area containing coal or lignite. Unamended provision was also of similar nature except that the companies which can be selected now for this purpose under the new provision are different from the companies which were mentioned in the old provision. It is for this reason, if applications were received even under unamended Section 11-A, they are saved and protected, which means that these applications can be processed under Section 11-A of the Act.

22.2. Second category of applications, which are kept eligible under the new provision, are those where the reconnaissance, permit or prospecting licence had been granted and the permit-holder or the licensee, as the case may be, had undertaken reconnaissance operations or prospecting operations. The reason for protecting this class of applicants, it appears, is that such applicants, with hope to get the licence, had altered their position by spending lot of money on reconnaissance operations or prospecting operations. This category, therefore, respects the principle of legitimate expectation.

22.3. Third category is that category of applicants where the Central Government had already communicated previous approval under Section 5(1) of the Act for grant of mining lease or the State Government had issued letter of intent to grant a mining lease before coming into force of the Amendment Act, 2015. Here again, the *raison d'être* is that certain right had accrued to these applicants inasmuch as all the necessary procedures and formalities were complied with under the unamended provisions and only formal lease deed remained to be executed.

22.4. It would, thus, be seen that in all the three cases, some kind of right, in law, came to be vested in these categories of cases which led Parliament to make such a provision saving those rights, and understandably so. (*emphasis supplies*) “

107. In view of the above discussion, we find substance in the submissions of the learned Senior Counsel for the petitioner that the application of the petitioner herein cannot be



rendered ineligible by invoking sub-section (1) of Section 10A as observed in the impugned communication dated 17.11.2017 of the Under Secretary to the Government of India, Ministry of Mines, New Delhi.

108. on a clarification sought by the Government of Gujarat vide communication dated 03.06.2017. It is noteworthy that as per the own understanding of the Industries and Mines Department, Government of Gujarat, lease could be executed as it had been granted before 12.01.2017, but a guidance was needed before taking final action.

109. The only basis of holding the mining lease applications of the then ABG Cements Ltd. as ineligible, as stated in the impugned communication of the Government of India dated 17.11.2017 is the provisions of Rule 8. As per the understanding of the Government of India, as expressed therein, Rule 8(4) is to be construed being in consonance with the statutory provisions of Section 10A and that it stipulated that the exercise of converting an application to a mining lease was to be completed by 11.01.2017, which included process of grant, execution and registration. The execution of the lease deed and its registration would have to be considered as grants for the purpose of Section 10A(2)(c).

110. The reasoning given therein that after 11.01.2017, the mining lease applications covered by Section 10A(2)(c), wherein lease deed had not been executed have become ineligible, in our considered view, is a result of misreading of the statutory provision and is in complete ignorance of the



effect of the “forfeiture” clause contained in sub-rule (4) of Rule 8, as held hereinbefore.

111. We, therefore, reach at an irresistible conclusion that the respondent No.1, namely the Secretary, Ministry of Mines, Government of India, New Delhi has committed an error of law in holding the application of the petitioner as ineligible, though the grant order under Section 10A(2)(c) had been passed prior to 11.01.2017, i.e. within the period of two years of the enactment of the Amendment Act 10 of 1995.

112. We, therefore, find it a fit case for granting relief as prayed in paragraph Nos. ‘10(c)’ and ‘10(d)’, of the present petition, for quashing and setting aside the order / communication dated 17.11.2017 of the Under Secretary, Ministry of Mines, Government of India, New Delhi, recommending the application of the petitioner to be declared as ineligible, and issue directions to the respondent State for execution of the lease deed as per the order of grant dated 08.10.2017.

113. The respondent No.2, namely the Secretary, Industries and Mines Department, Gandhinagar, Gujarat is directed to take all necessary steps to complete the process to execute and register the mining lease deed of the subject land, i.e. for an area admeasuring 300.6957 Hectares situated at Village Naniber, Taluka Abdasa, District Kachchh under its order dated 08.01.2017 for grant of limestone mining lease, subject to fulfillment of all the conditions of the letter of grant dated 08.01.2017 by the petitioner and strictly in accordance with



the provisions of sub-rule (3) of Rule 8 of the Minerals (Other than Atomic and Hydro Carbons Energy Mineral) Concession Rules, 2016, within the shortest possible time. It is provided that in case of non-fulfillment of any of the conditions of the order of grant dated 08.01.2017 by the petitioners, it would be open for the respondent No.2 to pass a reasoned order strictly in accordance with law, revoking the grant under due intimation to the petitioner.

114. In any case, the entire exercise shall be completed as expeditiously as possible, preferably within a period of three months from the date of receipt of the copy of this order.

115. As regards prayer '10(b)', as noted hereinbefore, the same has been given up by the learned Senior Counsel for the petitioner at the inception of the arguments.

116. Subject to above observations and directions, the present petition stands allowed. Pending civil application stands disposed of, accordingly.

(SUNITA AGARWAL, CJ)

(D.N.RAY,J)

SAHIL S. RANGER