

BEFORE THE NATIONAL GREEN TRIBUNAL

PRINCIPAL BENCH :: NEW DELHI

ORIGINAL APPLICATION No. 142 of 2022

(Under Section 18 of the National Green Tribunal, Act, 2010)

IN THE MATTER OF:

Jayant Kumar

..... Applicant

Vs.

Ministry of Environment,

Forest & Climate Change & Ors.

..... Respondents

**REPLY ON BEHALF OF THE APPLICANT TO THE REPLY OF
RESPONDENT NOS. 5 & 6**

Through

APPLICANT


(Vikas Kumar Singh)

Counsel for the Applicant

134, M.C. Setalvad Block,

Supreme Court of India,

New Delhi-110001.

Mobile No. +91 9911111246

Email : vksofficesc@gmail.com

Place : New Delhi

Dated : 01.09.2022

INDEX

S. No.	DESCRIPTION	PAGES
1.	Reply on behalf of Applicant to the Reply of Respondent Nos. 5 & 6 with affidavit.	1 – 35
2.	<u>ANNEXURE-R-1:</u> A true copy of order dated 16.08.2022 passed by this Hon'ble Tribunal in O.A. No. 61 of 2022 (All India Kaimur Peoples Front vs. State of U.P. & Ors.).	36 – 39
3.	<u>ANNEXURE-R-2:</u> A true copy of memo of Original Application No. 781 of 2018 (Amit Pandey vs. State of U.P. & Ors.).	40 – 55
4.	<u>ANNEXURE-R-3:</u> A true copy of bidding details dated 17.07.2018.	56 – 57
5.	<u>ANNEXURE-R-4:</u> A true copy of the Report dated 31.12.2018 submitted in Original Application No. 781 of 2018 (Amit Pandey vs. State of U.P. & Ors.).	58 – 72
6.	<u>ANNEXURE-R-5:</u> A true copy of the report dated 02.08.2019 submitted in Original Application No. 474 of 2019 (Surendra Singh vs. MoEF & CC & Ors.).	73 – 74
7.	<u>ANNEXURE-R-6:</u> A true copy of the order dated 25.10.2018 passed by this Hon'ble Tribunal in O.A. No. 781/2018 (Amit Pandey vs. State of U.P. & Ors.).	75 – 76
8.	<u>ANNEXURE-R-7:</u> A true copy of the order dated 28.11.2018 passed by this Hon'ble Tribunal in O.A. No. 781/2018 (Amit Pandey vs. State of U.P. & Ors.).	77 – 78
9.	<u>ANNEXURE-R-8:</u> A true copy of the order dated 04.01.2019 passed by this Hon'ble Tribunal in O.A. No. 781/2018 (Amit Pandey vs. State of U.P. & Ors.).	79 – 81

10.	<u>ANNEXURE-R-9:</u> A true copy of report dated 28.02.2019 of the Commissioner, Vindhyachal Division, Mirzapur submitted in O.A. No. 781/2018 (Amit Pandey vs. State of U.P. & Ors.).	82 – 90
11.	<u>ANNEXURE-R-10:</u> A true copy of the order dated 25.03.2019 passed by this Hon'ble Tribunal in O.A. No. 781/2018 (Amit Pandey vs. State of U.P. & Ors.).	91 – 92
12.	<u>ANNEXURE-R-11:</u> A true copy of memo of parties of Civil Appeal No. 5257/2019 (Dev Prakash Maurya & Ors. vs. All India Kaimur Peopl's' Front & Ors.).	93 – 95
13.	<u>ANNEXURE-R-12:</u> A true copy of the memo of Civil Appeal No. 5093 of 2019 (Sai Ram Enterprises & Ors. Vs. Amit Pandey & Ors.).	96 – 141
14.	<u>ANNEXURE-R-13:</u> A true copy of the order dated 10.08.2020 passed by Hon'ble Supreme Court of India in Civil Appeal No. 12202 of 2018 (Dharmendra Kumar Singh vs. State of U.P. & Ors.).	142 - 145
15.	<u>ANNEXURE-R-14:</u> A true copy of the judgement dated 28.10.2020 passed by the Hon'ble Supreme Court of India in Civil Appeal No. 12202 of 2018 (Dharmendra Kumar Singh vs. State of U.P. & Ors.).	146 - 168

**BEFORE THE NATIONAL GREEN TRIBUNAL
AT PRINCIPAL BENCH :: NEW DELHI
ORIGINAL APPLICATION NO. 142 OF 2022**

IN THE MATTER OF :

JAYANT KUMAR

..... APPLICANT

Versus.

MoEF & CC & Ors.

..... RESPONDENTS

**REPLY ON BEHALF OF THE APPLICANT TO THE REPLY
OF RESPONDENT NOS. 5 & 6**

MOST RESPECTFULLY SHOWETH:

PARAWISE REPLY :

1. That in reply to the contentions made in Para 1 it is submitted here reply to report submitted by the Joint Committee on behalf of respondent nos. 5 and 6 with affidavit, be treated as reply on behalf of respondent no. 6 (M/s. C.S. Infra-Construction Ltd.) through its Managing Director only who has sworn supporting affidavit to this reply and not be treated as reply on behalf of respondent no. 5 (M/s. Sai Ram Enterprises) Th. Its Partner Mr. Chandra Bhushan Gupta who has neither sworn supporting affidavit to this reply nor

authorised respondent no. 6 to sworn affidavit on his behalf.

2. That the contentions made in Para 2, are wrong, hence denied as the said allegations are baseless and concocted, as the mining proponents – answering respondents are the part of biggest syndicate of mining mafias in the District – Sonbhadra who are at the luxury of illegal mining in connivance of State Authorities and now when they have been brought before the Court of law for their illegalities they are alleging these baseless and concocted allegations on the applicant who, is a social worker and act for protection and preservation of environment and ecology who has exposed the illegalities of these mining mafias through this Original Application before this Hon'ble Tribunal and not an extortionist; blackmailer and threatener instead these respondents are illegal miners and money launderers in District – Sonbhadra who bribe each and every State Officials for their illegal benefits in the field of mining. A true copy of order dated 16.08.2022 passed by this Hon'ble Tribunal in O.A. No. 61 of 2022 (All India Kaimur Peoples Front vs. State of U.P. & Ors.) is annexed herewith as **ANNEXURE-R-1** (Pages 36-39) where answering respondent no. 5 has been declared illegal miner and direction has been issued for recovery

of entire value of the mined material and in addition to compensation for damage to the environment.

3. That the contentions made in Para 3, are wrong, hence denied, the applicant has challenged the Environmental Clearance and Mining Lease Deeds granted to the mining proponents – answering respondent nos. 5 & 6 on various cogent grounds and prevailing laws by way of present Original Application before this Hon'ble Tribunal, entertaining the same this Hon'ble Tribunal pleased to issue notice to respondent nos. 1, 3 and 4 vide order dated 04.08.2022, and if this Hon'ble Tribunal will not prohibit these illegal miners from carrying out illegal mining that will amount to travesty of justice.
4. That in reply to the contentions made in Para 4, it is submitted here before listing of the Original Application on 28.02.2022, the Registry of this Hon'ble Tribunal has informed about the filing of the present Original Application to the answering respondents on being caveats as the Registry of this Hon'ble Tribunal informed the Counsel for the Applicant that there are caveats in the matter, further as answering respondents are well aware of their illegalities and had filed prior caveats for making misleading submissions before this Hon'ble Tribunal.

5. That in reply to the contentions made in Para 5, it is submitted here as stated in preceding para, the Registry of this Hon'ble Tribunal has informed the counsel for the answering respondents about the filing of the Original Application against them and may be also provided them copy of the Original Application, otherwise the counsel for the answering respondents would have definitely requested the counsel for the applicant for the copy of the original application as a matter of right being on caveats as per provisions and rules, further the issue of service of Original Application and other documents has been rested by this Hon'ble Tribunal vide order dated 15.07.2022 as the copy of Original Application alongwith enclosures and interim application sent by E-mail on 15.07.2022 to the Ld. Counsel for respondent nos. 5 and 6 and further this Hon'ble Tribunal on 15.07.2022 given liberty to the answering respondents to file detailed reply to which the answering respondent nos. 5 and 6 have not choose to file any detailed reply to the contentions/allegations made in the Original Application and only filed reply to the report dated 30.06.2022.
6. That the contentions made in Para 6, are wrong, hence strongly denied as the applicant has filed this Original Application against the answering respondents on true and correct facts and praying for relief against the

respondents with clean hands without any personal interests. The present procedure followed in grant of mining leases suffers grave legal infirmity as despite State Authorities being well aware about the nature of land which is a Reserved Forest Land, deeds of mining leases have been registered in favour of answering respondents, further a cluster block of 16-17 hectare has been divided into 4 homogenous blocks violating the precedent laid down in Deepak Kumar vs State of Haryana (2012) 4 SCC 629, further Environmental Clearances were granted to the answering respondents on 23.10.2018 after the judgment and order dated 13.09.2018 passed by this Hon'ble Court in O.A. No. 186 of 2016 (Satendra Pandey vs. MoEF & CC & Ors.) following the judgment of Deepak Kumar vs State of Haryana (2012) 4 SCC 629 intent there in that DEIAA does not comprise of any experts who can undertake appraisal so as to comply with the requirement of meaningful EC in terms of judgement of Deepak Kumar. DEIAA, as per new procedure vide Notifications dated 15.01.2016, 20.01.2016 and 01.07.2016 amending EIA Notification dated 14.09.2006, is not required to prepare any EIA/EMP which is critical to appraisal for grant of EC, and further as the subject mining lease land is a Reserved Forest land no effective and requisite permissions and clearances have been procured by the answering respondents which will be made evident

through the contents of the following paragraphs and irresponsibly carrying out illegal mining outside the granted mining area.

7. That in reply to the contentions made in Para 7, it is submitted here an advertisement published on 01.06.2018 for leasing out 4 blocks of Gata No. 7536 Ga Mi and 2 blocks of Gata No. 5593 Ka through the process of e-tender cum e-auction and after bidding dated 17.07.2018, letter of intent dated 20.08.2018 were issued in favour of successful bidders including answering respondents, the said letter of intents were challenged in Original Application No. 781 of 2018 (Amit Pandey vs. State of U.P. & Ors.) seeking closing down of subject mining leases going to be operated on forest land. A true copy of memo of Original Application No. 781 of 2018 (Amit Pandey vs. State of U.P. & Ors.) is annexed herewith as **ANNEXURE-R-2** (Pages 40-55).

Further, with regard to obtaining of NOC from DFO, Obra Forest Division and DFO, Kaimur Wildlife Sanctuary Division, it is pertinent to mention here that as per report dated 31.12.2018 submitted in the matter of Amit Pandey (supra) NOCs issued by DFOs stand automatically ineffective after the order dated 13.07.2018 passed by this Hon'ble Tribunal in O.A. No.

429 of 2016 (All India Kaimoor Peoples Front vs. State of U.P.), the relevant portion of the report are as below :

“5. In this manner it has been differentiated from notification under section 4 of Indian Forest Act, 1927 by the Forest Settlement Officer / Additional District Judge before the order dated 13.07.2018 passed by the Hon'ble National Green Tribunal, but the No Objection Certificate issued by the then Divisional Forest Officer, Obra for granting mining concession under the E-tendering cum E-Auction process on total 06 Khands, 02 Khands in 5593Ka and 04 Khands in 7536Ga present Gata Nos. of Village Billi Markundi have automatically become ineffective after the order dated 13.07.2018 passed by the Hon'ble National Green Tribunal.”

Further with regard to earmarking of land for grant of mining lease taking into consideration the topography of land, it is pertinent to mention here a survey report dated 23.05.2018 have been prepared with regard to Khand – 01, 02, 03 & 04 of Gata No. 7536 mentioning quantity of availability of minerals in each Khands of Gata No. 7536 but there was no specific mention as to which part of Gata No. 7536 this survey report belongs to either it is for Gata No. 7536 Ga Mi or 7536 Gha, as it is said that process of carving out of land for grant of

mining leases done by the State Government but in survey report dated 23.05.2018 failed to mention in which Gata Number of 7536 minerals are available, but an advertisement for leasing out was published for Gata No. 7536 Ga Mi which is wrong hence denied as all the Khands 01, 02, 03 & 04 part of Gata No. 7536 Gha, further, it is submitted here there is no demarcation despite notification under Section 20 of the Indian Forest Act, 1927 in the subject area.

8. That in reply to the contentions made in Para 8, it is submitted here bidding dated 17.07.2018 should not have taken place in view of the order dated 13.07.2018 passed by this Hon'ble Tribunal in O.A. No. 429 of 2016 (All India Kaimoor Peoples Front vs. State of U.P.). A true copy of bidding details dated 17.07.2018 is annexed herewith as **ANNEXURE-R-3** (Pages 56-57).
9. That in reply to the contentions made in Para 9, it is submitted here as stated above Letters of Intent dated 20.08.2018 challenged in the matter of Amit Pandey (Supra) and according to report dated 31.12.2018 submitted by the State Authorities in the said matter the letter of intents said to be against the order dated 13.07.2018 passed by this Hon'ble Tribunal, relevant portion of the report are as below :

“6. After the order dated 13.07.2018 of the Hon'ble National Green Tribunal, the District Magistrate, Sonbhadra, through his office letter no. 1290 / khanij / 2018 dated 20.08.2018; letter no. 1291 / khanij / 2018 dated 20.08.2018; letter no. 1292 / khanij / 2018 dated 20.08.2018; letter no. 1294 / khanij / 2018 dated 20.08.2018; letter no. 1295 / khanij / 2018 dated 20.08.2018; letter no. 1296 / khanij / 2018 dated 20.08.2018, has given his consent through letter of intent in favour of applicants, the copy of which has been received on 07.12.2018 through email in this office. The consent provided through the said letter of consent in favour of 5 applicants for approval of lease of the land which is notified under section 4 of Indian Forest Conservation Act, 1927, is against the order dated 13.07.2018 passed by the Hon'ble National Green Tribunal.

A true copy of the Report dated 31.12.2018 submitted in Original Application No. 781 of 2018 (Amit Pandey vs. State of U.P. & Ors.) is annexed herewith as **ANNEXURE-R-4** (Pages 58-72).

Further as per preceding paras the No Objection Certificate granted by DFO, Obra Forest Division and DFO, Kaimur Wildlife Sanctuary Division, have become

ineffective after order dt. 13.07.2018 and Letter of Intents were found to be against the order dated 13.07.2018 passed by this Hon'ble Tribunal in O.A. No. 429 of 2016 (All India Kaimoor Peoples Front vs. State of U.P.), therefore in absence of requisite elements of clearances and formalities the answering respondents were not eligible for applying for Environmental Clearances and further Environmental Clearances granted in absence of above to the answering respondents by DEIAA in consonance of EIA notification dated 15.01.2016 are null and void.

10. That in reply to the contentions made in Para 10, it is submitted here the project proponents – answering respondent nos. 5 & 6 have not proceeded with clean hands in connivance of State Authorities for obtaining Environmental Clearance as the granted mining area is Reserve Forest being so NOCs and LOIs were got ineffective after order dated 13.07.2018 passed by this Hon'ble Tribunal in O.A. No. 429 of 2016 (All India Kaimoor Peoples Front vs. State of U.P.), further EIA Notification dated 15.01.2016 and 20.01.2016 challenged before this Hon'ble Tribunal by way of Original Application No. 186/2016 titled Satendra Pandey vs. MoEF & Anr. on 18.04.2016, and from the first date of hearing of the case Counsel for the State of U.P. was regularly appearing and final order dated

13.09.2018 was also passed in presence of Counsel for the State of U.P., and final order dated 13.09.2018 has not been challenged before the appellate court, hence attained finality and become a precedent having retrospective and prospective effect, by these submission it is intended to sketch that District Magistrate, Sonbhadra being well aware of all the above mentioned facts despite that answering respondents succeeded in obtaining Environmental Clearances are not sustainable in law, therefore EC granted on 23.10.2018 after final order dated 13.09.2018 in Satendra Pandey (supra) when existence of DEIAA has been set-aside is bad in law.

11. That in reply to the contentions made in Para 11, it is submitted here issuance of Office Memorandum dated 12.12.2018 by the MoEF & CC, Govt. of India and a decision dated 05.02.2019 in a joint meeting of UP – SEIAA & SEAC are the subsequent developments which are mere formalities following the order dated 13.09.2018 in case of Satendra Pandey (supra) which has been passed by following the judgment of Hon'ble Supreme Court in Deepak Kumar vs. State of Haryana (2012) 4 SCC 629 which remains in existence throughout, which were further followed by this Hon'ble Tribunal in case of Surendra Singh O.A. No. 474 of 2019 in which following orders were passed :

“4. In view of above, we dispose of this application with following directions :

i). Till environmental clearance is granted by SEIAA, the mining operations with regard to leases in question will remain suspended.

ii). The State of U.P. may recover compensation for illegal mining in violation of O.M. dated 12.12.2018 issued by the MoEF&CC in compliance of the judgment of this Tribunal dated 13.09.2018 in O.A. No. 186/2016, Satendra Pandey vs. Ministry of Environment, Forest and Climate Change & Anr. which has been enforced by the State of Uttar Pradesh on 05.02.2019.”

12. That in reply to the contentions made in Para 12, it is submitted here order dated 13.09.2018 in Satendra Pandey vs. MoEF & CC of this Hon'ble Tribunal was passed before the grant of Environmental Clearance on 23.10.2018 to the answering respondent nos. 5 & 6, therefore, EIA Notification dated 15.01.2016 & 20.01.2016 were suspended to be in effect in light of Deepak Kumar Judgment of Hon'ble Supreme Court of India and issuance of Environmental Clearances thereafter to the answering respondents by DEIAA whose existence has been set-aside, in such existing regime of Judgment of Deepak Kumar is bad in law.

Further, the judgment of the Hon'ble Supreme Court in case of Deepak Kumar vs. State of Haryana (2012) 4 SCC 629 and order of this Tribunal dated 13.09.2018 in O.A. No. 186/2016 (Satendra Pandey vs. MoEF & CC) have been followed in case of Surendra Singh O.A. No. 474 of 2019 by this Hon'ble Tribunal and had cancelled the Environmental Clearance and Mining Lease Deeds granted on 30.10.2018 and executed on 16.11.2018, 26.11.2018, 30.11.2018, 01.12.2018 & 10.12.2018 respectively apparently before OM dated 12.12.2018 of MoEF&CC, Government of India and decision dated 05.02.2019 of UP-SEIAA/SEAC, and in present case in hand Environmental Clearances were granted on 23.10.2018 to the respondent nos. 5 & 6 which are liable to be cancelled in light of facts and circumstance and submissions made above.

Further with regard to report dated 30.06.2022 of Joint Committee, it is submitted here as per order dated 28.02.2022 of this Hon'ble Tribunal copy of the Original Application has been sent/served upon the District Magistrate, Sonbhadra alongwith UPPCB & UP-SEIAA who have not at all considered the contentions/grievances raised by the applicant in Original Application relying upon various cogent grounds and judgments like Deepak Kumar, Satendra Pandey and similar case Surendra Singh whose relevant

orders are annexed in Original Application passed by this Hon'ble Tribunal, particularly order dated 23.12.2020 passed in O.A. No. 992 of 2019 (Surendra Singh vs. MoEF & CC & Ors.) [ANNEXURE-A-10 Pages 134-137 to the OA] in which note of report dated 02.08.2019 submitted in O.A. No. 474 of 2019 (Surendra Singh vs. MoEF & CC & Ors.) has been taken, which is not taken into consideration by this present Joint Committee, therefore it is necessary to quote relevant paras of the report dated 02.08.2019 which are as below :

“VII. The Director, Directorate Environment and Director, Geology and Mining by their orders dated 14-02-2019 requested all the District Magistrate to act as per decision taken by joint committee of SEIAA and SEAC on 05/02/2019 as follows :

"In compliance of MoEF & CC, GOI, OM dated 12.12.2018, it is decided that all mining cases of minor minerals having 0 to 5 ha area will be appraised by UP-SEIAA for Environment Clearance. All concerned project proponents will apply to UP-SEIAA in Form-1 with other required supporting documents on online MoEF & CC website www.environmentclearance.nic.in to process the application for grant of prior environment clearance with immediate effect till further order.”

- VIII. *In view of order of Hon'ble NGT dated 24/05/2019 this committee is of opinion that all EC's issued by DEIAA after Hon'ble NGT order dated 13/09/2018 between the lease area 0-5 ha should take fresh EC from SEIAA as per norms.*
- IX. *All Mining activity remains suspended. So, in this period procedure may be adopted for seeking fresh EC of the areas between 0-5 ha as per NGT orders in this regard necessary order should be disbursed immediately to obey the procedure as per NGT order dated 13.09.2018."*

A true copy of the report dated 02.08.2019 submitted in Original Application No. 474 of 2019 (Surendra Singh vs. MoEF & CC & Ors.) is annexed herewith as **ANNEXURE-R-5** (Pages 73-74).

As per above stated contentions all the District Magistrates were made aware about the decision of SEIAA/SEAC dated 05.02.2019 that the ECs issued by DEIAA after the order dated 13.09.2018 should take fresh EC from SEIAA and minings stand suspended for fresh EC from SEIAA, apparently present Joint Committee in the case in hand has not taken note of above and stated EC issued to respondent nos. 5 & 6 are valid as well as in accordance with law which is not at all sustainable and liable to be rejected by this

Hon'ble Tribunal in light of above mentioned facts and circumstances.

13. That in reply to the contentions made in Para 13, it is submitted here the Environmental Clearances dated 23.10.2018 are invalid / ineffective on two facets. First, the granted mining area being a Reserved Forest Land, the Letter of Intents and No Objection Certificates were challenged in the case of Amit Pandey (supra) where State Authorities after the order dated 13.07.2018 of this Hon'ble Tribunal in O.A. No. 429 of 2016 (All India Kaimur Peoples' Front vs. State of U.P. & Ors.) declared these Letter of Intents and No Objection Certificates ineffective vide report dated 31.12.2018, therefore in absence of LOI and NOC Environmental Clearance could not have been applied for and if applied for and granted stand invalid / ineffective. Second, the O.M. dated 12.12.2018 issued by the MoEF & CC in compliance of the judgment of this Hon'ble Tribunal dated 13.09.2018 in O.A. No. 186/2016 Satendra Pandey Vs. MoEF&CC & Anr. which has been enforced by the State of U.P. on 05.02.2019 as the SEIAA/SEAC took a decision on 05.02.2019 that all mining leases of minor minerals having 0 to 5 hectare area will be appraised by SEIAA considered in final orders dated 14.08.2019 and 23.12.2020 passed by this Hon'ble Tribunal in O.A. No. 474/2019 (Surendra Singh vs. MoEF & CC & Ors.) and

O.A. No. 992/2019 (Surendra Singh vs. MoEF & CC & Ors.) respectively, therefore, in the present case till 05.02.2019 mining lease deeds were not executed and the same were executed on 05.10.2020 and 06.11.2020 on the basis of invalid/ineffective ECs granted by DEIAA after a very long time, from the above decision dated 05.02.2019 taken by SEIAA/SEAC and enforced by State of U.P. accordingly ECs stand automatically cancelled / invalid / ineffective in view of above, hence, the mining lease deeds executed on the basis of automatically cancelled / invalid / ineffective Environmental Clearances granted by DEIAA are not at all valid in eye of law and suffers legal infirmity.

14. That in reply to the contentions made in Para 14 it is submitted here no valid and surviving reasons for delay in registration of mining lease deeds subsequent to invalid/ineffective Environmental Clearances available to the answering respondents, the reasons assigned by the answering respondents in the following paras of reply are not sustainable and bad in law as well as against the prevalent rules, regulations and precedents in view of preceding paras and following paras herein and liable to be rejected by this Hon'ble Tribunal.

Further it is pertinent to mention here that lease process started on 01.06.2018 and concluded on

06.11.2020 so the Rules of U.P. Minor Minerals (Concession) Rules, 1963 were applicable to the lease process in view of the fact that from 29.10.2021 new U.P. Minor Minerals (Concession) Rules, 2021 are in effect, thus as per Rule 14 (3) of the U.P. Minor Minerals (Concession) Rules, 1963 the mining lease deed was required to be registered within a period of one month and here in the case in hand mining lease deeds were registered after about two years accordingly straight away liable to be cancelled by this Hon'ble Tribunal.

15. That in reply to the contentions made in Para 15 it is submitted here O.A. No. 781/2018 (Amit Pandey Vs. State of U.P. & Ors.) filed on 16.10.2018 challenging the Letter of Intent issued in favour of highest bidders through E-tender and E-auction for mining leases of 6 vacant areas of Boulder (Dolo Stone) Gata No. 7536 Ga Mi & 5593 Ka of Billi Markundi, in which the answering respondent nos. 5 & 6 herein M/s. Sai Ram Enterprises & M/s. C.S. Infrastructure Limited arrayed as Respondent nos. 6 & 8 respectively, where prayer has been made for closing down the mining leases going to be operated on reserve forest land (Gata No. 7536 at Billi Markundi) in violation of order dated 13.07.2018 passed by this Hon'ble Tribunal in O.A. No. 429 of 2016 (All India Kaimur Peoples' Front vs. State of U.P. & Ors.).

- (i) The said Original Application was 1st listed on 25.10.2018 where this Hon'ble Tribunal directed to cancel such leases as have been granted in violation of order dated 13.07.2018. A true copy of the order dated 25.10.2018 passed by this Hon'ble Tribunal in O.A. No. 781/2018 (Amit Pandey Vs. State of U.P. & Ors.) is annexed herewith as **ANNEXURE-R-6** (Pages 75-76).
- (ii) The said Original Application was next listed on 28.11.2018 where this Hon'ble Tribunal sought a report to be furnished on or before 31st December, 2018 directing the Commissioner, Mirzapur to comply with order dated 25.10.2018 and in case of non-compliance coercive measures will be taken including prosecution of person responsible for non-compliance. A true copy of the order dated 28.11.2018 passed by this Hon'ble Tribunal in O.A. No. 781/2018 (Amit Pandey Vs. State of U.P. & Ors.) is annexed herewith as **ANNEXURE-R-7** (Pages 77-78).
- (iii) On 04.01.2019 when the matter was listed this Hon'ble Tribunal taken note of report dated 31.12.2018 of the Commissioner, Mirzapur and Chief Conservator of Forests, Mirzapur where a reference made to order of Hon'ble Allahabad High

Court dated 14.02.2006 in W.P. No. 29546/2003 (Ved Prakash Garg & Ors. Vs. Additional District Judge & Ors.) which permitted mining in the area, further, reference also made to order of Hon'ble Allahabad High Court dated 04.10.2007 in W.P. No. 41578/2007 (Ravindra Kumar Singh & Ors. Vs. Additional District Judge & Ors.) holding no mining operation was permissible on the land included in the Notification U/s. 4 of the Forest Act, 1927 and held that in view of order of High Court dated 04.10.2007, order dated 14.02.2006 could not be followed. A true copy of the order dated 04.01.2019 passed by this Hon'ble Tribunal in O.A. No. 781/2018 (Amit Pandey Vs. State of U.P. & Ors.) is annexed herewith as **ANNEXURE-R-8** (Pages 79-81).

- (iv) Lastly the said Original Application was listed on 25.03.2019 where this Hon'ble Tribunal found that the leases in question have been illegally given on forest land taking into consideration report dated 26.02.2019 referring the letter of District Magistrate, Sonbhadra dated 25.02.2019 stating order dated 13.07.2018 in O.A. No. 429 of 2016 (All India Kaimur Peoples' Front vs. State of U.P. & Ors.) has been duly complied with after adopting due process of law and illegal mining has been

prohibited or leases have not been given effect to and disposed of the Original Application. A true copy of report dated 28.02.2019 of the Commissioner, Vindhyachal Division, Mirzapur submitted in O.A. No. 781/2018 (Amit Pandey vs. State of U.P. & Ors.) is annexed herewith as **ANNEXURE-R-9** (Pages 82-90) and a true copy of the order dated 25.03.2019 passed by this Hon'ble Tribunal in O.A. No. 781/2018 (Amit Pandey Vs. State of U.P. & Ors.) is annexed herewith as **ANNEXURE-R-10** (91-92).

16. That it is pertinent to mention here in the present matter in hand the Environmental Clearances dated 23.10.2018 and Mining Lease Deeds dated 05.10.2020 and 06.11.2010 are under challenge and the State Authorities submitted a report dated 30.06.2022 stating as below :

“Apart from those mentioned above, it has been mentioned in the revenue record that the Gata No. 7536 has total area of 106.396 Hectare out of which 4.122 Hectare is PRIVATE LAND, 60.1220 Hectare is RESERVE FOREST and rest area 42.1520 Hectare marked as 7536 Ga Mi is recorded in the name of PAHAD consisting of mineable minerals like Dolo Stone Boulders.

Khand No. 01 (Area-4.970 Hectares), Khand No. 02 (Area-4.0 Hectares), Khand No. 03 (Area-4.0 Hectares) and Khand No. 04 (Area-4.0 Hectares) are the parts of Gata No. 7536 Ga Mi. (Area-42.1520 Hectare). Since this Gata No. 7536 Ga Mi is very large in area, hence 04 blocks were carved out as Khand No. 01, 02, 03 & 04 for practical solution of e-auction leaving 100-meter area as minimum safety distance of the reserve forest on Gata No. 7536 Gha.”

As it is mentioned above that Khand No. 01, 02, 03 & 04 are part of Gata No. 7536 Ga Mi which is in reality and factually incorrect because all these Khands are part of Gata No. 7536 Gha (Reserved Forest) as the State Officials jumble in between Gata No. 7536 Ga Mi and Gata No. 7536 Gha by granting mining leases in Gata No. 7536 Gha (Reserved Forest) by describing and mentioning them as Gata No. 7536 Ga Mi on Papers, further out of the entire area of 106.369 hectare of Gata No. 7536 only around 16-17 hectare land (subject matter of present case) is remaining where minor minerals are available otherwise the rest of area of Gata No. 7536 are trench of 60-80 meters from surface and no surviving forest (60.1220 hectare) present on spot due to continuous illegal mining in past permitted by

State Authorities as per their convenience by violating prohibiting orders of the Hon'ble Courts.

Further, it is pertinent to mention here that similar contentions were made in report dated 31.12.2018 as made in above report dated 30.06.2022 which was submitted by the State Authorities in the matter of Amit Pandey vs. State of U.P. & Ors. (O.A. No. 781/2018) which was rejected by this Hon'ble Tribunal and directed to close illegal mining on Reserve Forest Land and the proceedings in case of Amit Pandey has attained finality upto the Hon'ble Supreme Court of India.

17. That a very grave clinching fact has been came into light from above which needs serious indulgence and consideration by this Hon'ble Tribunal and it is humbly prayed for forthwith prohibition of illegal mining on Reserve Forest Land.
18. That in reply to the contentions made in Para 16 it is submitted here that with regard to subject land notification U/s. 20 has been published on 15.06.2020.
19. That the contentions made in Para 17 are misleading hence strongly denied as it is stated the land over which mining leases have been granted in favour of the answering respondents were excluded from the purview

of Section 4 Notification under the settlement proceedings which is absolutely wrong as the said contention has been advanced by the answering respondents without placing on record any supporting material / documents and is nothing but an extremely vexatious and malicious attempt to mislead and prejudice this Hon'ble Tribunal. Further it is pertinent to mention here all the proceedings related to the subject land had attained finality either upto Hon'ble High Court of Allahabad or upto Hon'ble Supreme Court of India and therefore no dispute left.

Further in the case of Banwasi Seva Ashram vs. State of U.P. & Ors. (1986) 4 SCC 753, a writ petition was filed by tribals as the state government issued via notification two tehsils of their land as reserved forests. The government was in favour of establishing a power plant in the land whereas the tribals claimed the land to be theirs. This became the reason for the land to be disputed. The Court appointed a High-Power Committee to look into the claims. It also gave a general directive that none of the locals will be dispossessed. Forests are a national asset. On one hand, the Court sees the disturbed ecological balance due to the cutting of trees and the adverse long-term effects on climate. And has nothing to do with lands recorded as 'PAHAD' as stated.

That the answering respondents have not challenged the order dated 13.07.2018 by way of Civil Appeal No. 5257/2019 (Dev Prakash Maurya vs. All India Kaimur Peopl's' Front) as they were not parties in the said appeal. A true copy of memo of parties of Civil Appeal No. 5257/2019 (Dev Prakash Maurya & Ors. vs. All India Kaimur Peopl's' Front & Ors.) is annexed herewith as **ANNEXURE-R-11** (Pages 93-95). The answering respondents should be put to strict proof of the contentions made herein by them and in case the answering respondents are unable to substantiate its submissions, then the strictest possible action should be initiated against the answering respondents by this Hon'ble Tribunal.

Further the answering respondents have challenged only final order dated 25.03.2019 passed by this Hon'ble Tribunal in O.A. No. 781/2018 (Amit Pandey vs. State of U.P. & Ors.) before the Hon'ble Supreme Court being Civil Appeal No. 5093/2019 titled "Sai Ram Enterprises & Ors. Vs. Amit Pandey & Ors." where in these answering respondent nos. 5 and 6 were appellant no. 01 and appellant no. 04 respectively in Civil Appeal No. 5093/2019 where they have respectfully prayed for setting aside the final order dated 25.03.2019 passed by this Hon'ble Tribunal in O.A. No. 781 of 2018 but the said final order has not been set-aside and

confirmed/upheld by the Hon'ble Supreme Court granting no relief to the answering respondents. A true copy of the memo of Civil Appeal No. 5093 of 2019 (Sai Ram Enterprises & Ors. Vs. Amit Pandey & Ors.) is annexed herewith as **ANNEXURE-R-12** (Pages 96-141).

20. That the contentions made in Para 18 are wrong hence denied as it is submitted here issuance of notification under section 20 of the Indian Forest Act, 1927 was one of the issue involved and not "*what is forest land and what is not*" in the bunch of Civil Appeals before the Hon'ble Supreme Court and during proceedings Hon'ble Supreme Court has directed the State of U.P. for issuance of Section 20 notification, which has been issued on 15.06.2020 by the State of Uttar Pradesh and nothing has been said with regard to what is forest land and what is not, as well as in respect of mining leases granted to answering respondent is not forest land, these are all misleading submission made by answering respondents in this reply which out rightly liable to be rejected by this Hon'ble Tribunal having no substance.

After issuance of Section 20 notification only issue remained left to be decided in the appeals "Whether refund of the lease amount for the period it was not permitted to operate or whether the lease is liable to be renewed for that period of time?", the said issue

observed in order dated 10.08.2020 passed by the Hon'ble Supreme Court in Civil Appeal No. 12202 of 2018 (Dharmendra Kumar Singh vs. State of U.P. & Ors.), and further it is submitted here that in the said bunch of appeals there were no issue to be decided with regard to execution of fresh mining lease deeds. A true copy of the order dated 10.08.2020 passed by Hon'ble Supreme Court of India in Civil Appeal No. 12202 of 2018 (Dharmendra Kumar Singh vs. State of U.P. & Ors.) is annexed herewith as **ANNEXURE-R-13** (Pages 142-145).

21. That the contentions made in Para 19 are wrong hence strongly denied as on 25.02.2020 an attention being invited by the Counsel for the State of Uttar Pradesh to paragraph 16 of the supplementary counter affidavit that 2405.159 hectares notified under Section 4 of the said Act, consist of two categories - 2182 hectares where no dispute is pending in any Court of Law while 223 hectares which is forming subject matter of cases pending before either the Allahabad High Court or before the Additional District Judge stated to be around 188 hectares and 35 hectares respectively, the answering respondents does not pointed out by which order of the State Government and how issuance of section 20 notification lifted the embargo for execution of fresh mining lease deed on a reserved forest land as

the matter of Dhamendra Kumar Singh decided by Hon'ble Supreme Court is related only to the expired leases and leases in force and in the said matter no issue involve or dealt with regard to execution of fresh mining leases, therefore execution of fresh mining leases on 05.10.2020 and 06.11.2020 after about 2 years of grant of invalid Environment Clearances on forest land and after the judgment dated 28.10.2020 in Civil Appeal No. 5093/2019 (Sai Ram Enterprises & Ors. Vs. Amit Pandey & Ors.) is not at all sustainable in eye of law as no relief given to the answering respondents in the judgment dated 28.10.2020 by the Hon'ble Supreme Court, further observation with regard to "*no fault could be attributed to the lease holders*" is only for those lease holders whose lease either expired or in force and not for the persons whose fresh mining leases are about to be executed.

Further, it is submitted here that the mining lease deed of respondent no. 5 (M/s. Sai Ram Enterprises) was executed on 05.10.2020 before the final judgment of Hon'ble Supreme Court in Civil Appeal No. 12202/2018 (Dharmendra Kumar Singh vs. State of U.P. & Ors.) alongwith Civil Appeal No. 5093/2019 (Sai Ram Enterprises & Ors. Vs. Amit Pandey & Ors.) rendered on 28.10.2020, therefore, plea taken that delay occurred in registration of mining lease deed due to pendency of the

judicial proceedings before the Hon'ble Supreme Court is not available to respondent no. 5, hence mining lease deed of respondent no. 5 outrightly be cancelled on the ground of delay, and only mining lease deed of respondent no. 6 (M/s. C.S. Infra-Construction Ltd.) was executed on 06.11.2020 after the abovementioned judgment, in such situation also no benefit can be given to the respondent no. 6 of pendency of the judicial proceedings before the Hon'ble Supreme Court as the Hon'ble Supreme Court has not given any relief to the appellant therein in Civil Appeal No. 5093 of 2019 (Sai Ram Enterprises & Ors. vs. Amit Pandey & Ors.)

A true copy of the judgement dated 28.10.2020 passed by the Hon'ble Supreme Court of India in Civil Appeal No. 12202 of 2018 (Dharmendra Kumar Singh vs. State of U.P. & Ors.) is annexed herewith as **ANNEXURE-R-14** (Pages 146-168).

22. Para 20 contents are wrong and misleading hence denied as observation by the Hon'ble Supreme Court that the lease holders were not at fault has no concern with the present mining lease holders herein, as such observations are not for the answering respondents as they falls in the category of the persons whose fresh mining lease is about to be executed and the appeals decided by the Hon'ble Supreme Court was for the

category of lease holders whose mining leases were expired or to be renewed, therefore the judgment of Dharmendra Kumar Singh does not grant any relief to the answering respondents with regard to the execution of fresh mining lease deeds. Further in the present matter mining lease deeds were executed on 05.10.2020 and 06.11.2020 in favour of answering respondent nos. 5 and 6 respectively after about 2 years of grant of Environmental Clearances which is violation of Rule 14 (3) of U.P. Minor Minerals (Concession) Rules, 1963 which says lease deed should be executed within a period of one month and Environmental Clearances were deemed to be not in existence (cancelled / invalid / ineffective) in view of two facets, first NOC and LOI were got ineffective after order dated 13.07.2018 and second after issuance of O.M. dated 12.12.2018 of MoEF&CC and decision dated 05.02.2019 of UP-SEIAA and UP-SEAC considered in final orders passed by this Hon'ble Tribunal in cases of Surendra Singh, therefore mining leases executed on 05.10.2020 and 06.11.2020 while Environmental Clearances were deemed to be not in existence (cancelled / invalid / ineffective) makes executed mining lease deeds null and void and liable to be cancelled by this Hon'ble Tribunal.

23. That in reply to the contentions made in Para 21 it is submitted here Environmental Clearance has not been

challenged within the stipulated limitation provided in National Green Tribunal Act, 2010 by way of Appeal because there was no public hearing / consultation before the grant of Environmental Clearances as the answering respondents have not adopted applicable procedure and approached the appropriate authority with clean hands for grant of Environmental Clearances according to the nature of land i.e. Reserved Forest Land notified U/s. 4 of the Indian Forest Act, 1927, therefore, the whole process of grant of mining leases in favour of the answering respondents is fallacious and inaccurate and liable to be set-aside alongwith penalty and environmental compensation.

24. That the contentions made in Para 22 are wrong hence denied as it is submitted here the judgment in case of Satendra Pandey (supra) directed, the procedure laid down in the impugned notification dated 15.01.2016 be brought in consonance and in accord with the directions passed in the case of Deepak Kumar (supra), the relevant direction given by the Hon'ble Supreme Court in Deepak Kumar judgment is as below :

“We, in the meanwhile, order that leases of minor mineral including their renewal for an area of less than five hectares be granted by the States / Union

Territories only after getting Environmental Clearance from the MoEF”

The abovementioned directions of the Apex Court are in existence since 27.02.2012 D.O.J. and following the same in case of Satendra Pandey this Hon'ble Tribunal vide order dated 13.09.2018 set aside the notification dated 15.01.2016 issued by the MoEF to the extent of the power of issuing Environmental Clearance by District Level Environment Impact Assessment Authority (DEIAA) / District Level Expert Appraisal Committee (DEAC), therefore, EC's granted to the answering respondents by DEIAA on 23.10.2018 subsequently to the order of Satendra Pandey (supra) suffers legal infirmity and bad in law.

25. That in reply to the contentions made in Para 23 it is submitted here answering respondent no. 6 by letter dated 12.01.2022 has requested the District Magistrate to cancel the mining lease, but till date the District Magistrate has not passed any order cancelling the mining lease of respondent no. 6.
26. That in view of abovementioned facts and circumstances as well as prevalent provisions of law and relied upon judgments and orders, it is respectfully prayed that reject the submissions and reasons pleaded by the

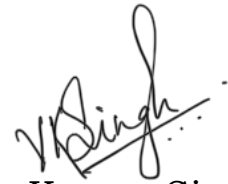
answering respondents and cancel the mining lease deeds executed / registered in violation of Rule 14 (3) of 1963, Rules and on the basis of invalid / ineffective Environmental Clearances granted by DEIAA.

APPLICANT

Through

Place : New Delhi

Dated : 01.09.2022



(Vikas Kumar Singh)

Counsel for the Applicant

134, M.C. Setalvad Block,

Supreme Court of India,

New Delhi-110001.

Mobile No. +91 9911111246

Email : vksofficesc@gmail.com



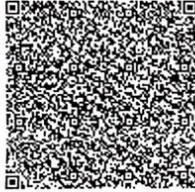
INDIA NON JUDICIAL Government of Uttar Pradesh

e-Stamp

Signature: *[Signature]*
ACC Name- MISHRI LAL
ACC Code- UP14643604
ACC Add- Duddhi, Sonbhadra
Mobile- 8887502433
License No-52/1975
Tensil- Duddhi, Sonbhadra

34

Certificate No.	:	IN-UP71643967335064U
Certificate Issued Date	:	20-Aug-2022 06:24 PM
Account Reference	:	NEWIMPACC (SV)/ up14643604/ DUDDHI/ UP-SNB
Unique Doc. Reference	:	SUBIN-UPUP1464360435584572536381U
Purchased by	:	JAYANT KUMAR S O RAM SUBHAG
Description of Document	:	Article 4 Affidavit
Property Description	:	Not Applicable
Consideration Price (Rs.)	:	
First Party	:	JAYANT KUMAR S O RAM SUBHAG
Second Party	:	Not Applicable
Stamp Duty Paid By	:	JAYANT KUMAR S O RAM SUBHAG
Stamp Duty Amount(Rs.)	:	10 (Ten only)



CMA
NOTARY TICKET
Rs. 10.00



IN-UP71643967335064U

Please write or type below this line

20 AUG 2022

आज दिनांक माह वर्ष

को शपथ जारी श्री *जयन्त कुमार*

पुत्र/पुत्री/पत्नी *राम सुभद्र*

निवासी *...*

के है जिसकी पहचान श्री *...*

द्वारा हुई मेरे समक्ष उपस्थित होकर प्रमाणित किया गया है

शपथ पत्र के लक्ष्यो के विषय को पढा, सुना व समझकर

इसका सही होना प्रमाणित किया।



20 AUG 2022

- Notary Alert:
1. The authenticity of this Stamp certificate should be verified at 'www.shcilestamp.com' or using e-Stamp Mobile App of Stock Holding Any discrepancy in the details on this Certificate and as available on the website / Mobile App renders it invalid
 2. The onus of checking the legitimacy is on the users of the certificate
 3. In case of any discrepancy please inform the Competent Authority

JAYANT KUMAR S O RAM SUBHAG JAYANT KUMAR S O RAM SUBHAG JAYANT KUMAR S O RAM SUBHAG JAYANT KUMAR S O RAM SUBHAG JAYANT KUMAR S O RAM SUBHAG JAYANT KUMAR S O RAM SUBHAG

**BEFORE THE NATIONAL GREEN TRIBUNAL,
PRINCIPAL BENCH, NEW DELHI**

Original Application No. 142 OF 2022

IN THE MATTER OF

Jayant Kumar

..... Applicant

Versus

Ministry of Environment,
Forest & Climate Change & Ors.

..... Respondents

AFFIDAVIT

I, Jayant Kumar aged about 33 years S/o Ram Subhag R/o Village & Post – Arangpani, P.S. - Myourpur, Arangpani, Dudhi, Distt. – Sonbhadra (U.P.) 231208 at present Secretary – Aadarsh Sewa Samiti and at present in Dudhi, Sonbhadra do hereby solemnly affirm and state as under :-

1. That I am sole applicant in the present Original Application and I have been dealing with the subject matter of this application and therefore I am well conversant with the facts and circumstances of the case and competent to file this affidavit.
2. The accompanying reply has been drafted under my instructions and the facts mentioned therein are true to my knowledge and the records obtained and the legal submissions are on the advice of the counsel believed to be true.




 Jayant Kumar
 DEPONENT

VERIFICATION :

I, the above named deponent do hereby verify that the contents of para 1 and 2 of the above affidavit are true to my knowledge.

Verified at Dudhi, Sonbhadra this the _____ day of August, 2022





 Jayant Kumar
 DEPONENT
 20/8/22

20 AUG 2022

Item No. 03

Court No. 1

**BEFORE THE NATIONAL GREEN TRIBUNAL
PRINCIPAL BENCH, NEW DELHI**

(By Video Conferencing)

Original Application No. 61/2022

All India Kaimur People's Front

Applicant

Versus

State of Uttar Pradesh & Ors.

Respondent(s)

Date of hearing: 16.08.2022

**CORAM: HON'BLE MR. JUSTICE ADARSH KUMAR GOEL, CHAIRPERSON
HON'BLE MR. JUSTICE SUDHIR AGARWAL, JUDICIAL MEMBER
HON'BLE PROF. A. SENTHIL VEL, EXPERT MEMBER**

Applicant: Mr. Vikas Kumar Singh, Advocate

Respondent(s): Mr. Daleep Dhyani, Advocate for UPPCB
Mr. S.K. Pathak & Mr. Sunil Singh, Advocate for R - 7
Mr. Sharad Chauhan, Advocate for M/s BCS Enterprises (R - 8)
Ms. Prabha Sharma, Advocate for M/s Ishana Construction (R - 9)**ORDER**

1. Grievance in this application is against illegal mining on the land of Chak Dam (Small village Dam) nala and railway pit, within the periphery of 50 meters from the land of dam, nala and railways in village Billi Markundi, Tehsil Obra, District Sonbhadra, in violation of Sustainable Sand Mining Guidelines and other environmental norms, including Mining Rules, 1963, by Respondents – Rajesh Kumar son of late Kaliram, Farida Begum wife of Imtiyaz Ahmad, Chopan, District Sonbhadra, M/s BCS Enterprises, Proprietor Chandra Bhushan Gupta son of Ram Lakhan Gupta, Obra, District Sonbhadra and M/s Ishana Construction, Proprietor

Afreena Khan wife of Ishtiyag, resident of village Billi Markundi, Obra, District Sonbhadra, UP.

2. Vide order dated 23.03.2022, the Tribunal directed the District Magistrate, Sonbhadra, Chief Development Officer, Sonbhadra and State PCB to look into the grievance and take remedial action in accordance with law. It was further directed that an action taken report be filed and if any violations are noticed, the violators may be put to notice of these proceedings for their response.

3. Accordingly, an action taken report has been filed on 25.05.2022 through the State PCB and the affected Project Proponents (PPs) have filed their response.

4. The report mentions that site inspection was conducted on 21.05.2022. It was found that the PPs had undertaken illegal mining. PP - Rajesh Kumar and Farida Begum, apart from earlier violations for which action was taken, conducted mining in excess of permitted quantity to the extent of 3854 cubic meters of boulders, for which notice was issued for recovery of penalty of Rs. 37,49,840.00/-. Further, illegal mining/ transportation was also found to the extent of 15,200 cubic meters, apart from other violations. In respect of M/s BCS Enterprises, there was illegal mining for which a sum of Rs. 26,79,440.00/- has been assessed and paid by the PP. In respect of Ishana Construction, illegal mining was found beyond permitted area to the extent of 15,732 cubic meters for which notice to recover amount of Rs. 1,19,99,000/- has been issued. The report recommends recovery of compensation for illegal mining from the three PPs in question.

5. The PPs have filed their respective replies. According to Rajesh Kumar and Farida Begum, mining was stopped on 28.01.2022 by Director, Mines & Safety. The said PPs have not undertaken any illegal mining. Stand of M/s BCS Enterprises is that there is no illegal mining outside the mining lease area. Stand of Ishana Construction is also that no illegal mining had been done.

6. The applicant has filed objections to the effect that the report ignores existence of *nalla* which is entered in the Revenue Record. The report merely states that the same was not visible. The report also ignores other violations of mining in prohibited area, ignoring the deep pits in the area showing further violations and need for stringent action for repeated violations.

7. We have heard learned counsel for the parties and perused the record.

8. We are of the opinion that the report being based on site inspection by a credible team of statutory regulators, there is no reason to reject the findings therein in absence of any tangible reason. Self-serving denial by the PPs can certainly be no reason to hold that there is no violation particularly when Rajesh Kumar and Farida Begum have already deposited the penalty on 15.03.2022. Mere fact that Ishana Construction claims to have challenged the penalty cannot be a ground to hold that no action is liable to be taken against the said PP.

9. Learned Counsel for the project proponent has referred to letter on record suggesting verification of compliance status of 22 leaseholders. The same may accordingly be verified and remedial action taken as per law.

10. Accordingly, we accept the facts found as per the report, showing illegal mining by the PPs for which accountability of the said PPs is required to be fixed. Apart from recovery of royalty and penalty under the Mining Rules, compensation for damage to the environment is also required to be assessed and recovered as per law, particularly judgements of the Hon'ble Supreme Court in *Common Cause vs. Union of India & Ors*, (2017) 9 SCC 499 and *Goa Foundation v. Union of India & Ors*. (2014) 6 SCC 590, to the effect that under section 21 (5) of the MMDR Act, 1957, the entire value of the mined material is to be recovered, in addition to compensation for damage to the environment.

11. Accordingly, we direct the District Magistrate and State PCB to take further steps in the matter in accordance with law, preferably within three months. Since environmental offences fall in the schedule to the PMLA Act, ED is free to consider if any action is warranted on their part under the law.

The Application is disposed of.

A copy of this order be forwarded to the District Magistrate, State PCB and Director, ED by email for compliance.

Adarsh Kumar Goel, CP

Sudhir Agarwal, JM

Prof. A. Senthil Vel, EM

August 16, 2022
Original Application No. 61/2022
AB



// TRUE COPY //

40

ANNEXURE-R-2

**BEFORE THE HON'BLE NATIONAL GREEN TRIBUNAL,
PRINCIPAL BENCH, SITTING AT NEW DELHI**

ORIGINAL APPLICATION No. OF 2018
(under section 14 & 15 read with section 18(1) of
National Green Tribunal Act, 2010)

BETWEEN

AMIT PANDEY ... Applicant

AND

STATE OF U.P. & Ors. ... Respondents

MEMO OF PARTIES

AMIT PANDEY
Presently posted as President
Sonbhadra Van Evam Paryavaran Sanrakshan Samiti
Situated at Uttar Mohal, Robertsganj,
District-Sonbhadra - 231216

...Petitioner

Versus

1. State of U.P. through Additional Chief Secretary
Bhutatva Evam Khanikarm Vibhag,
Government of U.P., Lucknow - 226001
2. District Magistrate, Sonbhadra - 231209
3. Mines Officer, Obra, District-Sonbhadra- 231219
4. Forest Settlement Officer, Sonbhadra -
Renukoot, Sonbhadra, U.P. - 231217, Ph. No. 05446252020
5. Neel Kanth Mining
Through Mr. Suresh Garg
Main Market, Ward No. 8,
Sandhuri, Chopan-231205
6. Sai Ram Enterprises/109700
Through Mr. Chandra Bhushan Gupta
2091, Near Aiyyappa Temple

Sector 4, Obra-231219
District Sonebhadra (U.P.).

7. Gyanendra Tripathi/109667
Ward No.21, Ashok Nagar
Robertsganj-231216
District Sonebhadra (U.P.).
8. C.S. Infrastructure Limited
Through Ms. Pushpa Singh
Village & Post : Khanwar
District Balia-221711 (U.P.).
9. Amit Enterprises/108353
Through Mr. Amit Mittal
61, Bari Dala, Dala-231207
District Sonebhadra (U.P.).

New Delhi

Dated : 16.10.2018

FILED BY

Ajeet Pandey

Ajeet Pandey

Advocate

E-20, Ground Floor

Lajpat Nagar-III

New Delhi-110024

Mobile No.9654894378

Email ID :

ajeetpandeyili@gmail.com

42

**BEFORE THE HON'BLE NATIONAL GREEN TRIBUNAL,
PRINCIPAL BENCH, SITTING AT NEW DELHI**

ORIGINAL APPLICATION No. OF 2018
(under section 14 & 15 read with section 18(1) of
National Green Tribunal Act, 2010)

BETWEEN

AMIT PANDEY ... Applicant

AND

STATE OF U.P. & Ors. ... Respondents

AN APPLICATION UNDER SECTIONS 14 & 15
READ WITH SECTION 18(1) OF NATIONAL
GREEN TRIBUNAL R/W SECTIONS.

MOST RESPECTFULLY SHOWETH:-

1. That address(s) of the Applicant is given above for the services of notice(s) of this Original Application and that of their representative(s).
2. That address(s) of the Respondents are given as above for the services of notice(s) of the application/Original Application.
3. This application is brought as public interest litigation. The applicant has no personal interest in the litigation and the applicant is not guided by self gain or for gain of any other person or the institution/body and that there is no motive other

than the public interest in the filing of the application. The application is based on information and documents either obtained from website of the Government or print media etc. The applicant is espousing the cause of down trodden (Adivasis) and of residents of Sonbhadra. The effected parties by the order sought in the application have been made respondents.

The District Magistrate by way of e-tender/e-auction allotted Khasra Plot No's 7536 & 5593 situated at Billi, Markundi, which is the Forest Land in view of this notification U/sec 4 in the Notification of Forest Department dated 01.04.1969 and as was held in the case of T. N. Godavarman Thirumalpad Vs Union of India & Ors. (Supra) and it has never been excluded from the purview of section 4 of the Forest Act. The applicant is challenging the Letters of Intent dated 20.08.2018 for mining purposes.

Copy of Letter of Intent No.1296 /Mining/2018 dated 20.08.2018 issued to Respondent No. 5 alongwith its true translated copy is annexed herewith as **ANNEXURE-A-1.**

Copy of Letter of Intent No.1291 /Mining/2018 dated 20.08.2018 issued to Respondent No. 6 alongwith its true translated copy is annexed herewith as **ANNEXURE-A-2.**

Copy of Letter of Intent No.1292 /Mining/2018 dated 20.08.2018 issued to Respondent Nos. 6 alongwith its true translated copy is annexed herewith as **ANNEXURE-A-3**.

Copy of Letter of Intent No.1294 /Mining/2018 dated 20.08.2018 issued to Respondent Nos.7 alongwith its true translated copy is annexed herewith as **ANNEXURE-A-4**.

Copy of Letter of Intent No.1290 /Mining/2018 dated 20.08.2018 issued to Respondent Nos. 8 alongwith its true translated copy is annexed herewith as **ANNEXURE-A-5**.

Copy of Letter of Intent No.1295 /Mining/2018 dated 20.08.2018 issued to Respondent Nos.9 alongwith its true translated copy is annexed herewith as **ANNEXURE-A-6**.

4. BRIEF FACTS OF THE CASE:

4.1 That the District Magistrate, Sonbhadra (respondent no. 2) made advertisement on 01.06.2018 inviting e-tendering cum e-auction for grant of mining lease for 20 years pertaining to building stones (dolo stone) Khanda grits, boulders etc. in respect of plot Gata No. 7536 (detailed at Sl. No. 1,2,3 and 4) under the provisions of Rule 23 (4) Chapter IV U.P. Minor Mineral (Concession) Rules, 1963 (as amended).

Copy of advertisement dated 01.06.2018 along with its true typed translation is annexed herewith as **ANNEXURE-A-7**.

4.2 That the Gata No. 7536 is constituted with old no. 3567 and 3575. Out of these old following area has been taken in the Auction Notice.

Plot No. 3567 - 373 bigha-12 Biswa	}	Total 376

Plot No. 3575 – 2 Bigha 9 Biswa Bigha 1 Biswa

Total 376 bigha area which was covered under this auction U/sec. 4 of the Forest Act, was advertised for e-tender cum e-auction.

4.3 That likewise vide the advertisement dated 1.6.2018 in respect of Gata No. 5593 Ka (at Sr. No. 5 & 6) situated at Village Billi Markundi E-tender cum E-Auction were invited for a period of 20 years. This Gata No. 5593 is comprising old Gata numbers 2978 area 189 bigha 5 biswa and 2852 area 59 bigha 5 biswa. Out of these old numbers total area-248 bigha 10 biswa=62 hectare approximately was also notified under section 4.

4.4 That Hon'ble Tribunal vide its judgment dated 13.07.2018 in O.A. No.429 of 2016 directed to close all the mining in the area covered under section 4 of the Forest Act, Total ban has been imposed for conducting mining activities or any activities against forest. The imperative need to keep that area (covered under section 4) free from mining was sought to be implemented through District Magistrate, Sonbhadra. The

District Magistrate was required to enforce the order and not to act contrary what was held by the Hon'ble Tribunal.

Copy of judgment dated 13.07.2018 passed in O.A. No.429 of 2016 is annexed herewith as **ANNEXURE-A-8**.

- 4.5 That the District magistrate in utter defiance to the directions of the Hon'ble Tribunal has restrained the mining units over the land which have been excluded from Forest Act and to the contrary granted fresh lease for mining for a period of 20 years over the land which is covered under section 4 of the Forest Act and held to be reserve forest by the Hon'ble Tribunal in M.A. No.1166 in W.P. No.202/1995.

Copy order dated 04.05.2016 passed in M.A. No.1166 in W.P. No.202/1995 is annexed herewith as **ANNEXURE-A-9**.

5. That the Applicant prefers the present Original Application on the following grounds amongst others :

GROUND

- A. BECAUSE the Forest Department issued notification U/sec 4 of the Indian Forest Act 1927(the Act) on 05.11.1969 in respect of the

land of 299 villages of Tehsil Duddi and 134 villages of Tehsil Roberts ganj of Dist Mirzapur (now District Sonbhadra), situated in south of Kaimur Range, declaring that as Reserve Forest. Notification U/sec. 20 of the Act could not take place in respect of the land covered under the aforesaid notification. Wherein Gata No. 7536 (old no. 3567 & 3575) and Gata No. 5593 Ka (Old No. 2976 and 2852 (1)) continuous to be the Forest covered u/sec 4 of the Forest Act.

- B. BECAUSE a Public Interest Litigation bearing Criminal Misc. W. P. No.1061 of 1982 and Criminal Misc. W.P. No.2662 of 1986, Banvasi Sewa Ashram Vs State of U.P. were filed before the Hon'ble Supreme Court, wherein the order was passed on 20.11.1986 directing that the officers of the Forest Department to demarcate and fix the pillars identifying the land covered by notification U/sec 4 dated 05.11.1969.

Copy of judgment passed in Crl. Misc. Petition No.2662 of 1986 in Writ Petition (Crl.) No.1061 of 1982 titled as Banvasi Seva Ashram Vs. State of U.P. & Ors. is annexed herewith as **ANNEXURE-A-10**.

Copy of Notification dated 05.11.1969 u/sec 4 of Forest Act alongwith true translated copy of

extract of Notification dated 05.11.1969 is annexed herewith as **ANNEXURE-A-11**.

- C. BECAUSE, the residents of that place were given liberty to file objections against the Notification U/sec 4 of the Act. Forest Settlement Officer was directed to make spot inspection in the light of the objections and in case the tribal's / residents are found in possession, then that land directed to be exempted from the above Notification U/sec 4.
- D. BECAUSE, Hon'ble Supreme Court has also directed that five additional District Judges be posted for deciding appeals arising out of this order of the Settlement Officer. In pursuance of the direction of the Supreme Court fresh notice U/sec 6 relating to the Notification U/sec 4 of the Act was given to the residents of Tehsil Duddi and Robertsganj.
- E. BECAUSE, of the detailed survey conducting by the Forest Settlement Officer, the land of Khata Gata No. 7536 constituted of Old No. 3567 and 3575 and Gata No. 5593 Ka made of old no. 2976 and 2852 continued to be covered under the Notification U/sec 4.

F. BECAUSE, this Hon'ble Tribunal in M. A. No. 1166 of 2015 in W.P. No. 202 of 1995 also held that:-

"In view of the declaration of the Hon'ble Supreme Court in Banvasi Sewa Ashram case dated 20.11.1986 the order of the Additional District Judge would be final and the Government had to implement their order. The failure of the State Government to notify the said land as Reserved Forest would not enable the State Government or the Forest Settlement Officer to exclude the very same land, when earlier it was found that the land cannot be excluded and the order has already become final and nobody exercised the liberty reserved by the Hon'ble Supreme Court in the judgment to approach the court if directions are necessary."

G. BECAUSE, the land of Gata No. 7536 and Gata No. 5593 situated at Village Markundi was not excluded from the Notification U/sec 4 of the Act and making the allotment of these plots for mining purposes is contrary to the directions of the Apex Court in the case of Banwasi Sewa Ashram and also against the direction given by this Hon'ble Tribunal in M. A. No. 1166 of 2015 in W.P. No. 202 of 1995.

- H. BECAUSE in Gata No.5593 Ka three selected operating mining leases were restrained pursuant to the orders of this Hon'ble Tribunal in OA No.429/2016 by the District Magistrate and rest were arbitrarily left. Now for the said land allotment by way of e-auction for mining was made. The order of Hon'ble Tribunal dated 13.07.2018 does not give liberty to the Dist. Magistrate to approbate and reprobate in the manner whatever he chooses to do.
- I. BECAUSE, by making amendment in the MAP (Naksha Tarmimi) the nature of the Forest reserved would not be changed and on that reserved forest mining rights by way of e-tender cum e-auction is illegal and in defiance of the orders of this Hon'ble Tribunal.
- J. BECAUSE, the District Magistrate while making allotment through e-auction has flouted the order of this Hon'ble Tribunal with impunity.
- K. BECAUSE, the exercise of the powers by the District Magistrate is ex-facie perverse, contrary to the decision of this Hon'ble Tribunal given in the

case of T. N. Godavardman (*Supra*). Such action of the District Magistrate inviting e-tender/e-auction in respect of the land covered u/sec 4 of the Act is arbitrary, whimsical, malafide and violative of article 14 and 20 of the constitution.

- L. BECAUSE, steps taken by the District Magistrate by way of e-tendering cum e-auction toward the plot over the land in question would not only destroy ecological integrity of the Kaimur Wildlife Area.
- M. BECAUSE in this regard an application was filed by one Raj Kumar Singh before the respondents through registered post dated 16.08.2018, who is also member/Mahamantri of Sonbhadra Van Evam Paryavaran Sanrakshan Samiti.
- N. BECAUSE till date no decision has been taken by the respondent on the representation of the Raj Kumar Singh and proceeded to allot the land for mining purposes illegally and arbitrary manner.
- O. BECAUSE, the applicant has no other option but to knock the door of this Hon'ble Tribunal with the

hope that the mining allotted under e-tender cum e-auction at Sonbhadra be cancelled.

6. LIMITATIONS :

That the cause of action is a continuous in nature and accrued to the applicant to file instant application on behalf of the affected villagers/ residents when the authorities did not act on the representation made by the applicant and making allotment contrary to the directions of the Hon'ble Supreme Court and this Hon'ble Tribunal. The instant application is within limitation.

PRAYER

It is therefore most respectfully prayed that in the interest of justice and for the reasons stated herein above, this Hon'ble Tribunal be pleased to:-

- i) Direct the respondents 1 to 4 to close down the mining units and other process activities being carried out by respondents 5 to 9 forthwith;
- ii) Direct the respondents no. 1 to 4 to initiate appropriate action against the respondents no. 5 to 9 not to carry out further activities on the land allotted to them, which are completely detrimental to the health of the public and to the forest reserve.

pass such other or further order(s) as this Hon'ble Tribunal may deem fit and proper on the facts and in the circumstances of the case

Amit Pandey
Applicant

Through

New Delhi

Dated : . . .2018

Ajeet Pandey
Ajeet Pandey
Advocate
E-20, Ground Floor
Lajpat Nagar-III
New Delhi-110024

VERIFICATION :

I, Amit Pandey son of Shri Baldev Pandey aged about 32 years resident of V.I.P. Road, Obra, District Sonbhadra (U.P.), present at New Delhi, do hereby verify that the contents of Para Nos. 1 to are true and correct to my knowledge and contents of Para Nos. to are believed to be true on the basis of legal advice and that I have not suppressed any material facts.

Dated :

Place : New Delhi

Amit Pandey
Applicant

**BEFORE THE HON'BLE NATIONAL GREEN TRIBUNAL,
PRINCIPAL BENCH, SITTING AT NEW DELHI**

ORIGINAL APPLICATION No. OF 2018
(under section 14 & 15 read with section 18(1) of
National Green Tribunal Act, 2010)

BETWEEN

AMIT PANDEY ... Applicant

AND

STATE OF U.P. & Ors. ... Respondents

AFFIDAVIT

I, Amit Pandey son of Shri Baldev Pandey aged about 32 years resident of V.I.P. Road, Obra, District Sonbhadra (U.P.), present at New Delhi, do hereby solemnly affirm and declare as under :

1. That I, the deponent above named being Applicant in the above titled, am fully conversant with the facts and circumstances of the case. As such, I am competent to swear the present affidavit.



That the accompanying Original Application has been drafted by my counsel under my instruction, contents of which are true and correct to my knowledge and contents of accompanying application may kindly be read as part and parcel of this affidavit as the same have not been repeated herein for the sake of brevity.

3. That my above statement is true and correct.

Amrit Landey
DEPONENT

VERIFICATION :

I, the deponent above named, do hereby verify that averments made in this affidavit are true and correct to the best of my knowledge and belief. No part of it is false and nothing material has been concealed therefrom.

Amrit Landey

I identify the Deponent who has signed/paid etc. in my presence

Verified at New Delhi on this the _____ day of _____, 2018.



Solemnly sworn before me read over & explained to the deponent Admitted to be correct

Oath Commissioner, New Delhi

Amrit Landey
DEPONENT

16 OCT 2018

16 OCT 2018

[Signature]
- TRUE COPY -

Summary Report of E-Tender-cum-E-Auction of Insitu Rocks / Stone Chips

District: Sonbhadra; Notified Royalty Rate: Rs 160 per Cu M

Insitu Block No (As per Advt)	Highest IPO Received	Highest Bid Received in E-Auction	Overall Highest Bid	Name & Address of Overall Highest Bidder
1	3009	3010	3010	Sai Ram Enterprises/109700 Address: 20 91 Near ayappa mandir Sector 8, Obra 231219 Contact Person: Chandra Bhushan Gupta Telephone No: 9918378106 Email Id: sairamenterprisesbr@gmail.com
2	2999	3000	3000	GYANENDRA TRIPATHI/109667 Address: WARD NO 21 ASHOK NAGAR, ROBERTSGANJ 231216 Contact Person: GYANENDRA TRIPATHI Telephone No: 9919631800 Email Id: gyanendratripathisbr@gmail.com
3	2999	3000	3000	C S Infraconstruction Limited /109909 Address: Village and Post Khanwar, Ballia 221711 Contact Person: Bhupendra Singh Telephone No: 9918700418 Email Id: csillucknow@gmail.com
4	2899	2900	2900	Sai Ram Enterprises/109700 Address: 20 91 Near ayappa mandir Sector 8, Obra 231219 Contact Person: Chandra Bhushan Gupta Telephone No: 9918378106 Email Id: sairamenterprisesbr@gmail.com
5	1651	1652	1652	Amit Enterprises/108353 Address: 61 Bari Dalla , Dalla 231207 Contact Person: Amit Mittal Telephone No: 7317447170 Email Id: amitmittal15081991@gmail.com

6	1809	1810	1810	<p>Neelkanth mining/109748 Address: main market ward no 8 senduhari, chopan 231205 Contact Person: Suresh garg Telephone No: 9936394631 Email Id: neelkhanthsbr@gmail.com</p>
---	------	------	------	---

Note: System Generated E-mails have also been sent to the highest bidders which shall be produced by the respective bidders. Before issuance of Letter of Intent (LOI) to the successful bidder, these emails may be cross verified with this report. Bid sheet copy, for records and cross checking of this report, may also be downloaded from district Tender Committee Member login. Discrepancy, if any, may please be immediately reported to MSTC at anandnitin@mstcindia.co.in (0522-4240445)

**Nitin
Anand**

Digitally signed by Nitin Anand
DN: cn=N, o=Personal,
postalCode=846101, st=Bihar,
2.5.4.20=a059629bbd7c7046b4ad24b
74c5ed622d086ea2108d55c0c2eacae3
cd922bdf6,
serialNumber=c6e0c02b5fda5f46a31c
637204fa1ee26793ea0c965c73911b4a
01c8eef1e55b, cn=Nitin Anand
Date: 2018.07.17 11:29:59 +05'30'



// TRUE COPY //

ANNEXURE-R-4

मा0 नेशनल ग्रीन ट्रिब्यूनल, प्रिन्सपल बेन्च, नई दिल्ली में योजित याचिका संख्या 781/2018 में पारित आदेश दिनांक 28.11.2018 के सम्बन्ध में।

मा0 नेशनल ग्रीन ट्रिब्यूनल, प्रिन्सपल बेन्च, नई दिल्ली द्वारा अमित पाण्डेय बनाम उ0प्र0 सरकार व अन्य में दिनांक 28.11.2018 को आदेश पारित किया है जिसमें उल्लिखित है कि "As per letter received from District Magistrate, District Sonbhadra, the area in question falls within the jurisdiction of Commissioner, Vindhyachal Division, Mirzapur, While order of this Tribunal was directed to Commissioner, Varanasi. If it was so, the Commissioner Varanasi should have either taken appropriate steps in the matter of looking into the facts, as directed, or Commissioner Vindhyachal Division Mirzapur should have done the needful. We, thus do not appreciate the stands taken that neither of the two was to comply with the directions of this Tribunal till further clarification. Accordingly, we direct the Commissioner, Mirzapur to comply with the order dated 25.10.2018. The same may now be done at the earliest and a report be furnished to the Tribunal by e-mail at ngt.filing@gmail.com on or before 31st December, 2018.

It is made clear that if there is further non-compliance, this tribunal will be left with no other option except to take coercive measures, including directing prosecution of the person responsible for non-compliance. List the matter for further consideration of 4th January, 2019. Learned counsel for the State may convey the order for compliance to the concerned authorities."

उक्त सन्दर्भित प्रकरण अंकित पाण्डेय बनाम उ0प्र0 सरकार व अन्य में आदेश दिनांक 25.10.2018 पारित करते हुए निर्देशित किया गया है कि ऐसा कदम उठाया जायेगा जो कि ट्रिब्यूनल के आदेश दिनांक 13.07.2018 को लागू करने के लिए आवश्यक होंगे। ट्रिब्यूनल द्वारा पारित आदेश दिनांक 25.10.2018 में उल्लिखित है कि-

1. The applicant seeks closing down the mining leases operating in the forest area on the forest land by respondents no 5 to 9, i.e., Neel Kant Mining, Sandhuri, Chopan, Sair Ram Enterprises, District Sonbhadra (UP), Gyanendra Tripathi, District Sonebhadra, C.S. Infrastructure Limited, District Balia and Amit Enterprises, District Sonebhadra.
2. Learned Counsel appearing for the applicant points out that in respect of the same area, this Tribunal has passed order dated 13.07.2018 in Original Application No. 429/2016 in All India Kalmur People's Front Vs. The State of U.P. & Ors. Directing the State of Uttar Pradesh to prohibit all the leases on the forest land.
3. Since it is stated that the leases have been granted or continued in violation of the order of this Tribunal, steps will have to be taken to cancel such leases as have been granted in violation of order of this Tribunal.
4. Accordingly, we direct the Commissioner, Varanasi along with the concerned authority of the Forest Department to look into the factual aspects and take such steps as may be necessary to enforce the order of this Tribunal dated 13.07.2018 within two months from the date of receipt of a copy of this order.
5. The applicant is at liberty to furnish a copy of this order alongwith a complete set of papers to the Commissioner, Varanasi for Compliance.
6. The application stands disposed of.

59

प्रकरण संख्या 429/2016 आल इण्डिया कैमुर पीपुल्स फ्रंट बनाम उ०प्र० सरकार में
ट्रिब्यूनल द्वारा पूर्व में पारित आदेश दिनांक 13.07.2018 में उल्लिखित है कि-

1. This petition was filed on 04th August, 2016 seeking immediate prohibition of illegal mining with the following prayers:-

- (i) "Direct the respondents-authorities to put immediate ban/prohibition upon continued illegal mining and projects within 1 or 2 km from Kaimur Wildlife Sanctuary situated in Village-Billi Markunid (about 80 mining leases of Dolo Stone/Lime Stone; Villages- Vardiya and Sinduriya (about 15 mining leases of Dolo Stone/ Lime Stone), Villages-Agorikhas, Kota, Redia, Gurdah, Sasnai, Kargara, Mitapur, Badagoan and Patbadh (about 15 mining leases of Sand/morrum), District-Sonebhadra with an immediate effect in compliance of the orders passed by the Hon'ble Supreme Court in case of Goa Foundation Vs. Union of India;
- (ii) Direct the respondents-authorities to cancel all mining leases conducted in Villages-Salkhan, Bahuar, Dugaulia, Hinauti and Julauli Colony (8 mining leases of Sand Stone) within 10 km. Of the periphery of Kaimur Wildlife Division situated in District- Mirzapur and Robergsanj Range and Ghorawal Range of Kaimur Wildlife Sanctuary, District- Sonebhadra with an immediate effect which is in contravention of Ministry's guidelines and orders of the Hon'ble Supreme Court to the effect that no mining leases .
- (iii) Direct the respondents-authorities to restore Kaimur Wildlife Sanctuary situated in District-Sonebhadra free from any mining work in order to protect further damage to environment and Wildlife."

2. In pursuance of Notice issued by this court, a notification dated 20th March, 2017 has been filed by the Ministry of Environment, Forest and Climate Change declaring the area in question as Eco-Sensitive Zone under section 3(3)(2) of Environment (Protection) Act, 1986.
3. In the affidavit of State of Uttar Pradesh dated 18th April, 2018 it was stated that out of 119 leases 33 are operational outside the Eco-Sensitive Zone.
4. In the Rejoinder affidavit filed on behalf of the Applicant on 28th May, 2018, it has been pointed out as follows:-

"That the contents of para 5 of the affidavit is absolutely wrong, hence strongly denied in as much as the averments to the effect that 33 mining leases out of 119 mining leases are operational in the district-Sonebhadra are not only contrary to the averments made in counter-affidavit filed by the respondents 8 and 9 namely Divisional Forest Officers, Mirzapur and Senbhadra wherein it is stated that out of list of 118 entitled leases of 42 entities have already expired and as far as remaining 76 entities there are about 17 entities which are on the land which were never notified as forest land under any provisions under Indian Forest Act, 1927 and remaining 59 leases are pertaining to that land which at one point of time in 1969 was covered under Section 4 notification of Indian Forest Act, 1927 wherein the State had proposed

to constitute the said land as reserved forest but also judgment/order dated 04.05.2016 passed by this Hon'ble Tribunal in M.A. No. 1166 of 2015 in a similarly situated land declared as forest land under Section 4 of the Indian Forest Act, 1927 which is general in nature and the same shall have to be complied with. The operative portion of the same judgment is quoted as under:

"The State of U.P. shall cancel all mining leases whether fresh or renewal and all other non-forestry activities on the area notified under Section 4 of the Forest Act for which settlement rights have been finalized pursuant to the judgment in Banwasi Sewa Ashram case dated 20th November, 1986 and shall ensure that there is no non-forestry activity including mining in any such land without the permission/approval of the Hon'ble Supreme Court."

Further in pursuance of said direction of this Hon'ble Tribunal, the forest department has already initiated a high level enquiry for ascertaining the land liable to be declared as reserve forest and all the mining NOCs issued earlier related to said section 4 area have been suspended pending such enquiry but till date mining leases are still subsisting as the same has not been cancelled so far and nothing further has been mentioned that when the enquiry will be completed by the State of U.P. as from this affidavit it is clear that the State of U.P. has not initiated any action in this regard and on the contrary has stated that 33 mining leases are still operating. As 33 mining leases are operating contrary to said order dated 04.05.2016, hence the State of U.P. may be directed to cancel 33 such mining leases also which are operating on an area notified under section 4 of the Indian Forest Act, 1927.

5. On being confronted, the learned Counsel for the State is unable to explain as to how in the face of order dated 04th May, 2016, 33 mining leases can be allowed to continue. Only explanation is that these lease are now 29 not 33 and the same are not in forest area.
6. We find the following from the affidavit of the State dated 23rd January, 2017.

"Remaining 59 leases are pertaining to that land which, at one point of time in 1969, was covered under Section-4 notification of Indian Forest Act, 1927. Wherein the State had proposed to constitute the said land as reserved forest. However, the process of declaration of reserved forest in terms of section 20 could not take place. However, still the fact remains that in view of the Forest (Conservation) Act, 1980 the nature of the said land will have to undergo the rigor of certain approvals from different authorities for their uses of non-forestry activities and in that background the answering respondents are required to be consulted for its NOC in case the non-forestry activities have to be undertaken in such land despite the fact that the said land is yet to be notified under section 20 of the Indian Forest Act, 1927. Further in addition to the above it is necessary to point out as stated in the foregoing paragraphs that M.A. No. 1166 of 2016 n WPC 200 of 1995 (T.N. Godaverman Vs. Union of India) by 04.05.2016 this Hon'ble Tribunal in relation to similarly situated Section 4 land has passed detailed judgment which is general in nature and the same shall have to

be complied with. The operative portion of the said judgement reads as under:-

"The State of U.P. shall cancel all mining leases whether fresh or renewal and all other non-forestry activities on the areas notified under Section 4 of the forest Act for which settlement rights have been finalized pursuant to the Judgment in Banavasi Sewa Ashram case dated 20th November, 1986 and shall ensure that there is no non-forest activity including mining in any such land without the permission/approval of the Hon'ble Supreme Court."

As stated in the preceding paragraph wherein Additional District Judge, Obra, had decided the cases in the year 1994 and upheld the decision of Forest Settlement Officer, being aggrieved by the judgement and order of Additional District Judge, Forest Department filed various review applications as per judgement and order passed by Hon'ble Supreme Court in Writ Petition No. 1061 of 1982 Banwasi Sewa Ashram V/s. State of U.P. The Learned A.D.J. Anpara at Obra decided all the review applications filed by Forest Department on 31-5-03 and decided all the disputed plots in above review in favour of Forest Department.

Therefore, as per direction of Hon'ble Tribunal in M.A. No. 1166 of 2015 the forest department has already initiated a high level enquiry for ascertaining the land liable to be declared as reserved forest as per order of Hon'ble NGT and all the mining NOCs issued earlier related to the said section 4 area have been suspended pending such enquiry."

7. In view of the above admission that the leases in question are on land covered by the notification under section 4 of Indian Forest Act, 1927 for which notification under section 20 of Indian Forest Act, 1927 has not yet been issued, the plea that the existing leases are valid cannot be sustained. The State of Uttar Pradesh must, as per earlier order of this court and the legal position mentioned above, prohibit forthwith all the leases in the said area.
8. Moreover, Hon'ble Supreme Court has prohibited mining within 1 km. of the boundary of Wildlife Sanctuaries and National Parks irrespective of the extent of ESZ. Beyond 1 km of the boundary of the Prohibited Area upto the extent of ESZ, if notified, or upto 10 km if ESZ not notified, all the proposals requiring environmental clearance are to be referred to the National Board for Wildlife.

With the above directions the Original Application No. 429 of 2016 stands disposed of.

M.A. No. 193 of 2017 and M.A. No. 199 of 2017

These applications do not survive for consideration as the main petition itself stands disposed of.

The M.A. No. 193 of 2017 and M.A. No. 199 of 2017 also stand disposed of accordingly.

(2) सन्दर्भित प्रकरण में दिनांक 05.12.2018 को बैठक आयोजित की गयी जिसमें जिला प्रशासन, वन विभाग एवं खनिज विभाग के अधिकारीगण उपस्थित थे। उक्त

आयोजित बैठक में वन विभाग एवं खनिज विभाग के अधिकारियों के दृष्टिकोण में भिन्नता के दृष्टिगत प्रकरण में जिलाधिकारी, सोनभद्र को इस कार्यालय के पत्र संख्या-461/आ0लि0/सं0वि0आ0/2017 दिनांक 06.12.2018 एवं प्रभागीय वनाधिकारी, ओबरा वन प्रभाग, ओबरा सोनभद्र को पत्रांक-460/आ0लि0/सं0वि0आ0/2017 दिनांक 06.12.2018 द्वारा साक्ष्यो सहित आख्या उपलब्ध कराने की अपेक्षा की गयी।

(3) उपरोक्त के क्रम में जिलाधिकारी, सोनभद्र ने अपने कार्यालय पत्रांक 2332/खनिज/2018 दिनांक 14.12.2018 द्वारा अपनी टिप्पणी इस प्रकार प्रस्तुत की है उ0प्र0 शासन द्वारा निर्गत शासनादेश संख्या-3236/86-2017 57 (सा0)/2017 दिनांक 12.12.2017 में दिये गये निर्देशानुसार जनपद में इमारती पत्थर डोलो स्टोन (गिट्टी/बोल्डर) के क्षेत्रों को खनन पट्टे पर स्वीकृत करने हेतु निम्न 06 क्षेत्रों का आशय पत्र (Letter of Intent) (संलग्नक-1) जारी किया गया है:-

क्र० सं०	पट्टाधारक का नाम	तहसील	ग्राम	आराजी संख्या	खण्ड संख्या	रकबा (हे० में)	राजस्व अभिलेखों के अनुसार गाटे की प्रकृति
1	2	3	4	5	6	7	8
1.	साई राम इण्टरप्राइजेज, पता-20 91 नियर अयप्पा मन्दिर सेक्टर-8, ओबरा, पिन-231219, सोनभद्र। चन्द्र भूषण गुप्ता	रावट्सगंज	बिल्ली मारकुण्डी	7536ग मि०	खण्ड -1	4.970	श्रेणी-6(4) जो अन्य कारणों से अकृषित हो, पहाड़ तदैव
2.	ज्ञानेन्द्र त्रिपाठी, पता वार्ड नं०-21 अशोक नगर, रावट्सगंज, सोनभद्र। ज्ञानेन्द्र त्रिपाठी	रावट्सगंज	बिल्ली मारकुण्डी	7536ग मि०	खण्ड -2	4.000	तदैव
3.	सी०एस० इन्फ्रा कन्स्ट्रक्शन लिमि०, पता ग्राम व पो०- खनवार, जनपद-बलिया, मैनेजिंग डाय०-श्रीमती पुष्पा सिंह,	रावट्सगंज	बिल्ली मारकुण्डी	7536ग मि०	खण्ड -3	4.000	तदैव
4.	साई राम इण्टरप्राइजेज, पता-20 91 नियर अयप्पा मन्दिर सेक्टर-8, ओबरा, पिन-231219, सोनभद्र। चन्द्र भूषण गुप्ता	रावट्सगंज	बिल्ली मारकुण्डी	7536ग मि०	खण्ड -4	4.000	तदैव
5.	अमित इण्टरप्राइजेज, पता 61 बारी डाला, डाला, पिन-231207, सोनभद्र। अमित मित्तल	रावट्सगंज	बिल्ली मारकुण्डी	5593क	खण्ड -8	4.230	श्रेणी-6(4) जो अन्य कारणों से अकृषित हो, पहाड़ तदैव
6.	नीलकण्ठ माइनिंग, पता मेन मार्केट वार्ड नं०-8 सेन्दुहरी, चोपन, सोनभद्र। सुरेश गर्ग	रावट्सगंज	बिल्ली मारकुण्डी	5593क	खण्ड -9	4.000	तदैव

उक्त 06 क्षेत्रों में से क्रमांक-1, 3 व 6 पर अंकित क्षेत्रों के लिए प्रस्तावको द्वारा पर्यावरण स्वच्छता प्रमाण पत्र प्रस्तुत कर दिया गया है। क्रम संख्या-6 पर अंकित क्षेत्र के लिए पट्टे का निष्पादन दिनांक 11.12.2018 को हो गया है तथा क्षेत्र 02 क्षेत्रों के लिए पट्टा निष्पादन की कार्यवाही शेष है। 03 क्षेत्रों के लिए अभी पर्यावरण स्वच्छता प्रमाण पत्र प्राप्त नहीं है। उपरोक्त 06 क्षेत्रों के सम्बन्ध में मा0 राष्ट्रीय हरित न्यायाधिकरण, नई दिल्ली द्वारा ओरिजनल अप्लीकेशन संख्या-781/2018 अमित पाण्डेय बनाम उ0प्र0 राज्य व अन्य में मा0 न्यायाधिकरण द्वारा पारित आदेश दिनांक 25.10.2018 एवं दिनांक 28.11.2018 में उल्लिखित अन्य किसी न्यायालय से कोई आदेश/निर्देश प्राप्त नहीं है। राजस्व अभिलेखों में उक्त सभी भू-खण्ड पहाड़ खाते (श्रेणी-6(4) जो अन्य कारणों से अकृषित हो) में दर्ज है।

आराजी संख्या-5593 एवं 7536 के सम्बन्ध में उपजिलाधिकारी, रावर्दसगंज से आख्या प्राप्त की गयी, जिसके अनुसार आराजी संख्या-5593 का कुल क्षेत्रफल 64.3330 हे० है, जिसमें से 5593क क्षेत्रफल 43.2160 हे० राजस्व अभिलेखानुसार श्रेणी-6(4) अन्य कारणों से अकृषिक भूमि-पहाड़ खाता के रूप में दर्ज है। आराजी संख्या-5593क में 02 खनन हेतु पट्टे क्रमशः 4.2300 हे० व 4.000 हे० योग क्षेत्रफल 8.2300 हे० स्वीकृत किये गये हैं। आराजी संख्या-7536 का कुल क्षेत्रफल 106.4720 हे० है, जिसमें से आराजी संख्या-7536ग क्षेत्रफल 42.9110 हे० राजस्व अभिलेखानुसार श्रेणी-6(4) अन्य कारणों से अकृषिक भूमि-पहाड़ खाता के रूप में दर्ज है। आराजी संख्या-7536ग में 04 खनन हेतु पट्टे क्रमशः 4.9700 हे०, 4.0000 हे०, 4.0000 हे०, 4.0000 हे० कुल योग क्षेत्रफल 16.9700 स्वीकृत किये गये हैं। इस प्रकार कुल 06 खण्डों में (8.2300 हे० + 16.9700 हे०) योग क्षेत्रफल 25.2000 हे० खनन किये जाने हेतु पट्टे स्वीकृत किये गये हैं। उपजिलाधिकारी द्वारा उपरोक्त दोनों आराजी के अभिलेखीय स्थित का विस्तृत विवरण भी प्रस्तुत किया गया है।

यह भी अवगत कराना है कि मुख्य वन संरक्षक, मीरजापुर क्षेत्र, मीरजापुर के पत्रांक-2105/मीरजापुर/33 दिनांक 09.11.2017 द्वारा जिलाधिकारी, सोनभद्र को पत्र प्रेषित कर यह अवगत कराया गया कि मिनजुमला वन भूमि में सर्वेक्षण एवं सीमांकन के सम्बन्ध में प्रधान मुख्य वन संरक्षक द्वारा विभागाध्यक्ष, उ0प्र0, लखनऊ की अध्यक्षता में दिनांक 07.11.2017 को विभागीय समीक्षा बैठक में अवगत कराया गया कि मुख्य सचिव, उ0प्र0 शासन द्वारा जिलाधिकारी सोनभद्र के मिनजुमला वन भूमि में सर्वेक्षण व सीमांकन करवाकर वन भूमि को अलग करवाने के निर्देश दिये गये हैं। इसलिए जनपद सोनभद्र के मिनजुमला नम्बरो की समस्या का स्थायी समाधान करने के लिए क्षेत्र में सर्वे सीमांकन का कार्य शीघ्र पूर्ण कराने का कष्ट करें, ताकि वन भूमि को बचाते हुए अवैध परिवहन पर प्रभावी नियंत्रण किया जा सके तथा मुख्य सचिव महोदय को उक्त के सम्बन्ध में हुई प्रगति से अवगत कराया जा सके।

उक्त के क्रम में जिलाधिकारी की अध्यक्षता में दिनांक 18.11.2017 को बैठक आहूत की गयी, जिसमें ग्राम बिल्ली मारकुण्डी के वन भूमि से सम्बन्धित मिनजुमला भूखण्डों के सीमांकन का निर्णय लिया गया। उक्त कार्य हेतु वन बन्दोबस्त अधिकारी, सोनभद्र के आदेश संख्या-525/व0ब0अ0/सीमांकन/ओबरा-सोनभद्र दिनांक 20.11.17 (संलग्नक-7)द्वारा वन/राजस्व/सर्वे एवं खनन विभाग के अधिकारियों/कर्मचारियों की एक टीम गठित की गयी। उक्त टीम द्वारा ग्राम बिल्ली मारकुण्डी के मिनजुमला भूखण्डों के गाटा संख्या 4949, 5593, 6229, 4471, 4478, 7407, 7536, 7569, 4465, 4467, 4477, 8015/4465 को मानचित्र पर वन भूमि तरमीम कर मौके पर सीमांकन किया गया। तत्पश्चात उक्त सभी मिनजुमला नम्बरो का सर्वे सीमांकन से सम्बन्धित गाटावार

64

जी0पी0एस0 को-आर्डिनेट एवं राजस्व मानचित्र पर वन भूमि दर्शाते हुए रिपोर्ट प्रभागीय वनाधिकारी, ओबरा वन प्रभाग, ओबरा, सोनभद्र को प्रेषित किया गया। उक्त के क्रम में प्रभागीय वनाधिकारी, ओबरा वन प्रभाग, ओबरा के पत्रांक-4150/ओबरा/15-अनापत्ति दिनांक 25.05.2018 द्वारा 15 खनन पट्टों की सूची का उल्लेख करते हुए अवगत कराया गया कि 03 खनन पट्टा क्षेत्र वन क्षेत्र में, 07 खनन पट्टा क्षेत्र 100 मीटर के अन्दर तथा 05 खनन पट्टे का आंशिक भाग वन भूमि के 100 मीटर से प्रभावित हो रहा है। प्रभागीय वनाधिकारी, ओबरा के पत्र में इंगित वन भूमि तरमीम के आधार पर वन भूमि में आने वाले 03 क्षेत्रों तथा वन सीमा के 100 मीटर की परिधि में आने वाले 07 पट्टों में खनन कार्य तत्काल बन्द करा दिया गया।

मिनजुमला नम्बरो के सीमांकन के पश्चात संयुक्त मानचित्र तैयार किया गया, जिसपर वन विभाग, राजस्व विभाग तथा खनन विभाग के अधिकारियों द्वारा हस्ताक्षर किये गये। ग्राम बिल्ली मारकुण्डी के आराजी संख्या-7536ग मि0 के कुल रकबा-16.970 हे0 क्षेत्र, जो वन भूमि से बाहर पाया गया, में खनन हेतु उपयुक्त 04 खण्ड बनाये गये तथा ग्राम बिल्ली मारकुण्डी के आराजी संख्या-5593क रकबा-8.230 हे0 वन भूमि से बाहर पाया गया, जिसमें खनन हेतु उपयुक्त 02 खण्ड बनाये गये। उक्त क्षेत्रों को खनन परिहार पर नियंत्रित किये जाने के निमित्त वन विभाग, ओबरा से वन अनापत्ति प्रमाण पत्र मांगा गया, जिसके क्रम में प्रभागीय वनाधिकारी, ओबरा के पत्रांक-3790, 3791, 3792, 3793 दिनांक 04.05.2018 द्वारा ग्राम बिल्ली मारकुण्डी के आराजी संख्या-7536ग मि0 के 04 खण्डों के लिए एवं पत्र संख्या-3708 एवं 3709 दिनांक 28.04.2018 द्वारा ग्राम बिल्ली मारकुण्डी के आराजी संख्या-5593क के 02 खण्डों के लिए अनापत्ति प्रमाण पत्र जारी किया गया है, जिसके आधार पर उपरोक्त 06 क्षेत्रों हेतु विज्ञप्ति जारी की गयी है।

इस सम्बन्ध में यह भी उल्लेखनीय है कि कैमूर पर्वत श्रंखला के दक्षिण ओर भूमि प्रबन्ध समिति का गठन न होने के कारण उधर की सभी भूमि वन विभाग के प्रबन्धन में दी गयी थी। वर्ष 1969-70 में भारतीय वन अधिनियम की धारा-4 के अन्तर्गत सुरक्षित वन बनाने हेतु विज्ञप्ति जारी की गयी थी। इस भाग में आदिवासी एवं बैकवर्ड क्लास के लोग निवास करते थे, वन विज्ञप्ति जारी होने के बाद उन्हें जंगलो से निकाले जाने की कार्यवाही की जाने लगी। जिसके विरुद्ध मा0 उच्चतम न्यायालय में रिट याचिका संख्या-1061/ 1982 वनवासी सेवा आश्रम बनाम वन विभाग योजित की गयी जिसमें मा0 सर्वोच्च न्यायालय के आदेश दिनांक 20.11.1986 द्वारा कैमूर सर्वे एजेन्सी का गठन किया गया। जिसके अन्तर्गत वन बन्दोबस्त अधिकारी, अभिलेख अधिकारी एवं ए0डी0 जे0 की नियुक्ति की गयी। स्टोन महाल एक्ट के तहत जो भी खनन व्यवसायी तत्समय पहाड़ों में खनन कार्य कर रहे थे, उन्होंने अपने-अपने कब्जे की भूमि के सम्बन्ध में कैमूर सर्वे एजेन्सी के वन बन्दोबस्त अधिकारी के समक्ष अपनी-अपनी आपत्तियां प्रस्तुत की। आपत्तिकर्ताओं एवं वन विभाग द्वारा प्रस्तुत दलीलो पर सुनवाई के पश्चात् वन बन्दोबस्त अधिकारी द्वारा क्रशर कार्य एवं लेबरहटमेंट के आधार पर सुरक्षित वन के प्राख्यान से पृथक कर राज्य सरकार के खाते में दर्ज रहने के पृथक-पृथक आदेश दिये गये। वन बन्दोबस्त अधिकारी के निर्णय को अपर जनपद एवं सत्र न्यायाधीश द्वारा कन्फर्म किया गया। उक्त के ही आधार पर अपर जनपद एवं सत्र न्यायाधीश के न्यायालय से खनन व्यवसायियों द्वारा प्रश्नोत्तर प्राप्त की जाती थी, जिसमें उल्लिखित होता था कि प्रश्नगत क्षेत्र वन भूमि तथा वन भूमि की धारा-4 से पृथक है, जिसके आधार पर तत्समय खनन परमिट/पट्टा स्वीकृत होते रहे हैं।

मा० उच्चतम न्यायालय द्वारा रिट याचिका संख्या-1061/1982 में दिनांक 18.07.1994 को आदेश पारित करते हुए यह आदेश दिया गया कि- We closed the proceedings of case. However, give liberty to the parties to approach this court and when it become necessary to do show for obtaining necessary directions.

मा० उच्चतम न्यायालय के उपरोक्त आदेश दिनांक 18.07.1994 से स्पष्ट है कि विवाद की स्थिति में क्षुब्ध पक्षकार को मा० उच्चतम न्यायालय में आवश्यक दिशा-निर्देश मांगना चाहिए था।

मा० अपर जिला जज, अनपरा स्थित ओबरा, सोनभद्र के आदेश दिनांक 31.05.2003 द्वारा ग्राम-बिल्ली मारकुण्डी के 136 वादों को निस्तारित करते हुए वादों से सम्बन्धित भूखण्डों को भारतीय वन अधिनियम की धारा-4 के अन्तर्गत सुरक्षित वन बनाये जाने के प्रस्ताव में सम्मिलित किये जाने के आदेश दिये गये। मा० अपर जिला जज, अनपरा स्थित ओबरा, सोनभद्र के आदेश दिनांक 31.05.2003 के विरुद्ध मा० उच्च न्यायालय, इलाहाबाद में रिट याचिका संख्या-29546/2003 वेद प्रकाश गर्ग व अन्य बनाम अपर जिला जज एवं सत्र न्यायाधीश व अन्य योजित की गयी। उक्त रिट याचिका में पारित अन्तिम निर्णय दिनांक 14.02.2006 का कार्यकारी अंश निम्नवत् है:-

"In view of the fact that the State Government has itself taken a decision that the land in question should be treated as land belonging to the Revenue Department of the State Government on which mining operations should be permitted as was being done earlier, it is directed that the applications for renewal of the mining leases of the petitioners shall be considered and decided by the respondent no-3 (Distt. Magistrate, Sonebhadra) in accordance with law, expeditiously, preferably within six weeks from the date of production of a certified copy of this order before the said respondent."

उक्त आदेश दिनांक 14.02.2006 के विरुद्ध वन विभाग द्वारा मा० उच्च न्यायालय के समक्ष विशेष अपील डिफेक्टिव नम्बर-63/2018 स्टेट आफ यू०पी० व दो अन्य बनाम वेद प्रकाश गर्ग व अन्य योजित की गयी थी। उक्त अपील की सुनवाई के पश्चात मा० उच्च न्यायालय द्वारा दिनांक 02.02.2018 को निम्नलिखित आदेश के साथ विशेष अपील को डिस्मिश् कर दिया गया।

There is a delay of 11 years and 320 days in filing the present special appeal.

The explanation given by the appellants is neither reasonable nor plausible.

We dismiss the special appeal on the ground of laches.

मा० उच्च न्यायालय, इलाहाबाद के उक्त आदेश दिनांक 14.02.2006 एवं दिनांक 02.02.2018 के विरुद्ध वन विभाग द्वारा मा० सर्वोच्च न्यायालय के समक्ष स्पेशल लीव पिटिशन (प्रिविलेज) डायरी नम्बर-(एस) 33675/2018 उ०प्र० सरकार व अन्य बनाम वेद प्रकाश गर्ग व अन्य योजित की गयी, जिसे मा० सर्वोच्च न्यायालय द्वारा दिनांक 22.11.2018 को निम्न आदेश के साथ खारिज कर दिया गया है:-

Exemption from filling O.T. granted.

Delay condoned

The special leave petition is dismissed.

मा० उच्च न्यायालय में योजित रिट याचिका संख्या-29546/2003 वेद प्रकाश गर्ग व अन्य बनाम अपर जिला जज एवं सत्र न्यायाधीश व अन्य में पारित आदेश दिनांक 14.02.2006, कुल 109 याचिकाकर्ताओं पर प्रभावी है।

प्रश्नगत क्षेत्रों के सम्बन्ध में ओरिजनल अप्लीकेशन संख्या-429/2016 आल इण्डिया कैमूर पिपुल्स फ्रंट बनाम उ०प्र० राज्य व अन्य में मा० एन०जी०टी० न्यायालय द्वारा दिनांक 13.07.2018 को एवं ओरिजनल अप्लीकेशन संख्या-781/2018 अमित पाण्डेय बनाम उ०प्र० राज्य व अन्य में मा० नेशनल ग्रीन ट्रिब्यूनल द्वारा दिनांक 25.10.2018 एवं दिनांक 28.11.2018 को आदेश पारित किया गया है।

(4) इसी प्रकार वन विभाग की ओर से प्रभागीय वनाधिकारी, ओबरा, वन प्रभाग ओबरा ने अपने पत्रांक-1726/ओबरा/10रिट दिनांक 09.12.2018 द्वारा अवगत कराया गया है कि-

मा० एन०जी०टी० न्यायालय, नई दिल्ली का ओरिजनल अप्लीकेशन संख्या-781/2018 अमित पाण्डेय बनाम उ०प्र० सरकार व अन्य में याची द्वारा मुख्य रूप से ग्राम-बिल्ली मारकुण्डी के 05 पट्टा आवेदकों के नाम ई-निविदा सह ई-निलामी प्रक्रिया के अन्तर्गत खनन परिहार स्वीकृत करने की कार्यवाही निरस्त करने की याचना की गयी है, जिसका विवरण निम्नानुसार है:-

क्र० सं०	आवेदक का नाम	ग्राम का नाम	साबिक गाटा संख्या	हाल गाटा संख्या	क्षेत्रफल
1	2	3	4	5	6
1	साई राम इण्टर प्राईजेज/109700 पता-2091 नियर अयप्पा मन्दिर सेक्टर 8, ओबरा, पिन 231219, जनपद सोनभद्र, चन्द्र भूषण गुप्ता।	बिल्ली मारकुण्डी	3567	7536ग मि०/01	4.970हे०
2	ज्ञानेन्द्र त्रिपाठी/109667 पता-वार्ड नं० 21 अशोक नगर, रावर्टसगंज, पिन 231216, जनपद सोनभद्र, ज्ञानेन्द्र त्रिपाठी।	बिल्ली मारकुण्डी	3567	7536ग मि०/02	4.00हे०
3	सी०एस० इन्फ्रान्सट्रक्चर लि०/109909 पता ग्राम व पोस्ट खनवार, जनपद बलिया, पिन-221711, मैनेजिंग डायरेक्टर-श्रीमती पुष्पा सिंह।	बिल्ली मारकुण्डी	3567	7536ग मि०/03	4.00हे०
4	साई राम इण्टर प्राईजेज/109700 पता-2091 नियर अयप्पा मन्दिर सेक्टर 8, ओबरा, पिन 231219, जनपद सोनभद्र, चन्द्र भूषण गुप्ता।	बिल्ली मारकुण्डी	3567	7536ग मि०/04	4.00हे०
5	अमित इण्टरप्राईजेज/108353, पता 61 बारी डाला, पिन 231207, जनपद-सोनभद्र, अमित मित्तल।	बिल्ली मारकुण्डी	2852 2805 2978 2989	5593क/08	4.230हे०
6	नीलकण्ठ माईनिंग/109748, पता मेन मार्केट वार्ड नं०-8 सेन्दुहरी, चोपन, पिन 231205, जनपद सोनभद्र, सुरेश गर्ग।	बिल्ली मारकुण्डी	2852 2805 2978 2989	5593क/09	4.00हे०

- उपरोक्त कालम संख्या 5 में उल्लिखित ग्राम-बिल्ली मारकुण्डी के हाल गाटा संख्या 7536 का साबिक नम्बर 3567 तथा हाल गाटा संख्या 5593 का साबिक नम्बर 2852, 2805, 2978, 2989 विज्ञापित सं०-3723/14-ख-4(67)-69 दिनांक 05 नवम्बर 1969 द्वारा भारतीय वन अधिनियम 1927 के अन्तर्गत धारा 4 में विज्ञापित है।
- मा० उच्चतम न्यायालय, नई दिल्ली द्वारा खनवासी सेवा आश्रम के याचिका में पारित निर्णय दिनांक-20.11.1986 के परिप्रेक्ष्य में सम्पन्न सर्वे रिकार्ड आपरेशन की कार्यवाही में ग्राम-बिल्ली मारकुण्डी के साबिक आराजी गाटा संख्या 3567 से बने हाल नम्बर 7536 तथा साबिक नम्बर 2852, 2805, 2978, 2989 से बने हाल नम्बर 5593 में वन बन्दोबस्त अधिकारी सोनभद्र के न्यायालय में विभिन्न लोगो द्वारा वाद

- दाखिल किया गया। जिसमें वन वन्दोवस्त अधिकारी एवं अपर जिला जज द्वारा वादो की सुनवाई की गयी।
3. वर्तमान सर्वे रिकार्ड आपरेशन की कार्यवाही में वन वन्दोवस्त अधिकारी/अपर जिला जज द्वारा भारतीय वन अधिनियम 1927 के अन्तर्गत धारा 4 की विज्ञापित से पृथक की गयी, ग्राम-बिल्ली मारकुण्डी के आराजी गाटा संख्या 7536 व 5593 में डोलो स्टोन के ई-निविदा सह ई निलामी कर, खनन पट्टा स्वीकृत करने हेतु अनापत्ति प्रमाण पत्र निर्गत करने हेतु खान अधिकारी सोनभद्र द्वारा कालम संख्या 6 में उल्लिखित पत्र से अनुरोध किया गया। जिसके क्रम में तत्कालीन प्रभागीय वनाधिकारी, ओबरा द्वारा कालम संख्या 7 में उल्लिखित पत्र से अनापत्ति प्रमाण पत्र निर्गत किया गया है। विवरण निम्नानुसार है:-

क्र० सं०	साथिक नम्बर	गाटा संख्या	रकवा	खण्ड	खान अधिकारी सोनभद्र का आवेदन का करने का पत्रांक व दिनांक	प्रभागीय वनाधिकारी, ओबरा द्वारा जारी अनापत्ति प्रमाण पत्र का पत्रांक व दिनांक
1	2	3	4	5	6	7
1	3567	7536ग मि०	4.00हे०	4	प०-302/खनिज/अ०प्र०प०/2017-18 दि० 02.05.2018	पत्रांक-3793/ओबरा/15 खनन दिनांक-04.05.2018
2	3567	7536ग मि०	5.270 हे०	1	प०-303/खनिज/अ०प्र०प०/2017-18 दि० 02.05.2018	पत्रांक-3790/ओबरा/15 खनन दिनांक-04.05.2018
3	3567	7536ग मि०	4.00हे०	3	प०-305/खनिज/अ०प्र०प०/2017-18 दि० 02.05.2018	पत्रांक-3792/ओबरा/15 खनन दिनांक-04.05.2018
4	3567	7536ग मि०	4.00हे०	2	प०-304/खनिज/अ०प्र०प०/2017-18 दि० 02.05.2018	पत्रांक-3791/ओबरा/15 खनन दिनांक-04.05.2018
5	<u>2852</u> <u>2805</u> <u>29781 2989</u>	5593क	4.00हे०	9	प०-261/खनिज/अ०प्र०प०/2017-18 दि० 28.04.2018	पत्रांक-3709/ओबरा/15 खनन दिनांक-28.04.2018
6	<u>2852</u> <u>2805</u> <u>29781 2989</u>	5593क	4.230 हे०	8	प०-260/खनिज/अ०प्र०प०/2017-18 दि० 28.04.2018	पत्रांक-3708/ओबरा/15 खनन दिनांक-28.04.2018

1. इस कार्यालय द्वारा उपरोक्त अनापत्ति प्रमाण पत्र मा० एन०जी०टी० न्यायलय के ओ०ए० संख्या -429/2016 आल इण्डिया कैमूर पीपुल्स फ्रन्ट बनाम् उ०प्र० राज्य व अन्य में दिनांक-13.07.2018 को परित निर्णय से पूर्व जारी किया गया था।
2. ग्राम-बिल्ली मारकुण्डी में वन वन्दोवस्त की कार्यवाही प्रचलित है एवं धारा 20 की कार्यवाही अभी पूर्ण नहीं हुयी है।
3. ग्राम-बिल्ली मारकुण्डी के भारतीय वन अधिनियम 1927 के अन्तर्गत धारा 4 में विज्ञापित खनन पट्टो के सम्बन्ध में मा० एन०जी०टी० न्यायलय, नई दिल्ली के ओ०ए० नम्बर 429/2016 आल इण्डिया कैमूर पीपुल्स फ्रन्ट बनाम् उ०प्र० सरकार

व अन्य में दिनांक-13.07.2018 को निर्णय पारित किया गया है। जिसका प्रभावी अंश निम्नानुसार है:-

7. In view of the above admission that the leases in question are on land covered by the notification under section 4 of Indian Forest Act, 1927 for which notification under section 20 of Indian Forest Act, 1927 has not yet been issued, the plea that the existing leases are valid cannot be sustained. The State of Uttar Pradesh must, as per earlier order of this court and the legal position mentioned above, prohibit forthwith all the leases in the said area.
4. मा0 एन0जी0टी0 न्यायालय, नई दिल्ली के आदेश दिनांक-13.07.2018 द्वारा दिये गये निर्देश का पालन करते हुए, जिलाधिकारी सोनभद्र द्वारा भारतीय वन अधिनियम 1927 के अन्तर्गत धारा 4 में विज्ञापित खनन पट्टों में खनन कार्य रोक दिया गया है।
 5. इस प्रकार मा0 एन0जी0टी0 न्यायालय, नई दिल्ली के आदेश दिनांक-13.07.2018 से पूर्व वन वन्दोवस्त अधिकारी/अपर जिला जज द्वारा भारतीय वन अधिनियम 1927 के अन्तर्गत धारा 4 की विज्ञापित से पृथक की गयी, ग्राम-बिल्ली मारकुण्डी के हाल गाटा संख्या 7536 ग में 04 खण्ड व 5593क में 02 खण्ड कुल 06 खण्ड पर तत्कालीन प्रभागीय वनाधिकारी, ओबरा द्वारा ई-निविदा सह ई-निलामी प्रक्रिया के अन्तर्गत खनन परिहार स्वीकृत करने हेतु जारी अनापत्ति प्रमाण पत्र, मा0 एन0जी0टी0 न्यायालय, नई दिल्ली के आदेश दिनांक-13.07.2018 के बाद स्वतः निस्प्रभावी हो जाता है।
 6. मा0 एन0जी0टी0 न्यायालय, नई दिल्ली के आदेश दिनांक-13.07.2018 के बाद जिलाधिकारी सोनभद्र ने अपने कार्यालय के पत्रांक-1290/खनिज/2018 दिनांक-20.08.2018, पत्रांक-1291/खनिज/2018 दिनांक-20.08.2018, पत्रांक-1292/खनिज/2018 दिनांक-20.08.2018, पत्रांक-1294/खनिज/2018 दिनांक-20.08.2018, पत्रांक-1295/खनिज/2018 दिनांक-20.08.2018 तथा पत्रांक-1296/खनिज/2018 दिनांक-20.08.2018 द्वारा आवेदकों के पक्ष में आशय पत्र द्वारा सहमति प्रदान किया गया है, जिसकी प्रति दिनांक-07.12.2018 को ई-मेल के माध्यम से इस कार्यालय में प्राप्त हुआ है। भारतीय वन अधिनियम 1927 के अन्तर्गत धारा 4 में विज्ञापित क्षेत्र, जिस पर जिलाधिकारी सोनभद्र द्वारा 05 आवेदकों के पक्ष में खनन पट्टा स्वीकृत करने हेतु आशय पत्र द्वारा सहमति प्रदान किया गया है, मा0 एन0जी0टी0 न्यायालय, नई दिल्ली के आदेश दिनांक-13.07.2018 के विपरीत है।
 7. मा0 एन0जी0टी0 न्यायालय, नई दिल्ली के ओ0ए0 नम्बर 429/2016 आल इण्डिया कैमूर पीपुल्स फ्रन्ट बनाम् उ0प्र0 सरकार व अन्य के सम्बन्ध में प्रमुख सचिव वन्य एवं वन्यजीव की अध्यक्षता में दिनांक-07.09.2018 को आयोजित बैठक जिसमें जिलाधिकारी सोनभद्र, प्रभागीय वनाधिकारी, ओबरा, खनिज विभाग एवं वन विभाग के शासन स्तर के अधिकारी उपस्थित थे तथा प्रश्नगत प्रकरण के सम्बन्ध में विचार-विमर्श किया गया, जिसमें प्रमुख सचिव वन, उ0प्र0 शासन, लखनऊ द्वारा निर्देश दिया गया कि "मा0 उच्चतम न्यायालय के आदेशों के दृष्टिगत भारतीय वन अधिनियम, 1927 के अन्तर्गत जिन क्षेत्रों में धारा 20 की विज्ञापित अभी तक निर्गत नहीं हुई है, ऐसे क्षेत्र में वन वन्दोवस्त अधिकारी द्वारा धारा 4 में से निकाली/छोड़ी गयी भूमि के सम्बन्ध में यदि खनन/गैर वानिकी कार्य सम्बन्धी कार्यवाही की जानी है तो उसके पूर्व सम्बन्धित व्यक्ति/प्रयोक्ता अधिकरण (User

- Agency) द्वारा वन (संरक्षण) अधिनियम, 1980 के प्राविधानों के अन्तर्गत आवश्यक कार्यवाही समयबद्ध तरीके से की जाये।"
8. महोदय के संज्ञान में यह भी लाना है मा० एन०जी०टी० न्यायालय, नई दिल्ली के आदेश दिनांक -13.07.2018 के अनुपालन में जिलाधिकारी सोनभद्र द्वारा जिस खनन पट्टे में खनन कार्य बन्द कराया गया है, उसके भी साबिक नम्बर भारतीय वन अधिनियम 1927 के अन्तर्गत धारा 4 में विज्ञापित है तथा सर्वे प्रक्रिया के दौरान वन वन्दोवस्त अधिकारी/अपर जिला जज/अन्य न्यायालय द्वारा धारा 4 की विज्ञापित से पृथक किया गया है तथा उक्त क्षेत्र वर्तमान उद्धरण खतौनी में पहाड़/राज्य सरकार/कृषकों के खाते में दर्ज है तथा प्रश्नगत प्रकरण से सम्बन्धित ग्राम-बिल्ली मारकुण्डी के हाल गाटा संख्या 7536 का साबिक नम्बर 3567 तथा हाल गाटा संख्या 5593 का साबिक नम्बर 2852, 2805, 2978, 2989 विज्ञापित सं०-3723/14-ख-4(67)-69 दिनांक 05 नवम्बर 1969 के द्वारा भारतीय वन अधिनियम 1927 के अन्तर्गत धारा 4 में विज्ञापित है तथा सर्वे प्रक्रिया के दौरान वन वन्दोवस्त अधिकारी/अपर जिला जज/अन्य न्यायालय द्वारा धारा 4 की विज्ञापित से पृथक किया गया है, तथा उक्त क्षेत्र वर्तमान उद्धरण खतौनी में पहाड़/राज्य सरकार के खाते में दर्ज है, परन्तु ग्राम-बिल्ली मारकुण्डी में वन वन्दोवस्त की कार्यवाही प्रचलित है एवं धारा 20 की कार्यवाही अभी पूर्ण नहीं हुयी है। जिसके सम्बन्ध में मा० एन०जी०टी० न्यायालय द्वारा दिनांक-13.07.2018 को निर्णय पारित किया गया है।

उपरोक्त विवरण से स्पष्ट है कि ग्राम-बिल्ली मारकुण्डी के आराजी गाटा संख्या 7536 में कुल 04 खण्ड एवं गाटा संख्या 5593 में कुल 02 खण्ड अर्थात कुल 06 खण्ड में जिलाधिकारी सोनभद्र द्वारा आवेदकों के पक्ष में आशय पत्र द्वारा सहमति प्रदान किया गया है, जो भारतीय वन अधिनियम 1927 के अन्तर्गत धारा 4 में विज्ञापित है, ग्राम-बिल्ली मारकुण्डी में वन वन्दोवस्त की कार्यवाही प्रचलित है एवं धारा 20 की कार्यवाही अभी पूर्ण नहीं हुयी है। जिस पर मा० एन०जी०टी० न्यायालय नई दिल्ली का आदेश दिनांक- 13.07.2018 प्रभावी है। जिसमें खनन कार्य किया जाना मा० एन०जी०टी० न्यायालय, नई दिल्ली के आदेश का अवमानना होगा।

निष्कर्ष/अनुपालन

मा० नेशनल ग्रीन ट्रिबुनल के आदेश दिनांक 13.07.2018 के अनुपालन के सम्बन्ध में जिलाधिकारी, सोनभद्र (खनन अनुभाग) तथा वन विभाग, सोनभद्र से उक्त स्थिति को स्पष्ट किये जाने की अपेक्षा की गयी। जिलाधिकारी सोनभद्र ने अपनी आख्या पत्रांक 2332/खनिज/2018 दिनांक 14.12.2018 द्वारा प्रस्तुत किया तथा प्रभागीय वनाधिकारी, सोनभद्र ने अपने कार्यालय पत्रांक-1726/ओबरा/10रिट दिनांक 09.12.2018 द्वारा अपनी आख्या प्रस्तुत किया है। उपरोक्त आख्याओं से स्पष्ट होता है कि जिला प्रशासन द्वारा 6 पट्टे होने का उल्लेख किया गया है, जो पृष्ठ संख्या 05 पर उल्लिखित है। इन पट्टों के सम्बन्ध में जिला प्रशासन खनिज अनुभाग द्वारा उक्त पट्टों के अद्यावधिक स्थिति के बारे में अवगत कराया गया कि क्रमांक 06 पर उल्लिखित पट्टे का एग्रीमेन्ट हो चुका है परन्तु प्रपत्र एम०एम०-11 जारी करने की स्वीकृति शासन/निदेशक में विचाराधीन है। क्रमांक 02 एवं 03 पर उल्लिखित पट्टों के सम्बन्ध में अवगत कराया गया कि अद्यपि पर्यावरणीय एन०ओ०सी० प्राप्त हो चुकी है किन्तु अभी एग्रीमेन्ट नहीं हुआ है। क्रमांक 01, 04 एवं 05 पर अंकित पट्टों की पर्यावरणीय एन०ओ०सी० अभी प्राप्त नहीं हुयी है।

ये सभी पट्टे जो किये गये हैं या प्रस्तावित हैं उनमें राजस्व अभिलेखों के अनुसार गाटे की प्रकृति श्रेणी 8(4) जो अन्य कारणों से अकृषिक हो, पहाड़ के रूप में दर्ज है। जिला प्रशासन (खनिज अनुभाग) द्वारा यह तर्क प्रस्तुत किया गया कि वन बन्दोबस्त अधिकारी द्वारा ग्राम बिल्ली मारकुण्डी, परगना अगोरी के प्रकरणों में विवादित भूखण्डों/ भूखण्ड अंशों को सुरक्षित वन से पृथक करने के आदेश वन बन्दोबस्त अधिकारी द्वारा पारित किया गया है। उनकी अपीलें अपर जिला जज, अनपरा, सोनभद्र के न्यायालय में प्रस्तुत की गयीं। अपर जिला जज, अनपरा, सोनभद्र ने अपने आदेश दिनांक 30.09.1994 द्वारा उन अपीलों में वन बन्दोबस्त अधिकारी द्वारा पारित आदेश की संपुष्टि किया (संलग्नक संख्या-..01..)। उसके उपरान्त इन वाद प्रकरणों में जो अपर जिला जज, अनपरा, सोनभद्र के द्वारा अपील में उपरोक्तानुसार निर्णित हुए उन में पुनर्विचार याचिकाएं वन विभाग द्वारा अपर जिला जज, अनपरा, सोनभद्र के न्यायालय में प्रस्तुत की गयीं। उस पर अपर जिला जज, अनपरा, सोनभद्र ने अन्ततः अपने आदेश दिनांक 31.05.2003 (संलग्नक संख्या ..02..) द्वारा वन विभाग द्वारा प्रस्तुत की गयी सभी पुनर्विचार याचिकाओं को स्वीकार कर लिया और पक्षकारों द्वारा प्रस्तुत समस्त पुनर्विचार याचिकाएं 37/2002 एवं 198/2008 को खारिज कर दिया तथा यह आदेश दिया कि सभी पुनर्विचार याचिकाओं के समक्ष सभी अपीलों में पारित निर्णय अपास्त किये जाते हैं। यह भी आदेश दिया गया कि उपरोक्त सभी वन विभाग द्वारा प्रस्तुत पुनर्विचार याचिकाएं एवं पक्षकार द्वारा प्रस्तुत पुनर्विचार याचिकाओं में उन भूखण्डों को धारा 4 वन अधिनियम के अन्तर्गत सुरक्षित बनाये जाने की याचिकाओं में सम्मिलित किये जाने के आदेश किये जाते हैं। अपर जिला जज, अनपरा, सोनभद्र के उक्त आदेश दिनांक 31.05.2003 से व्यथित होकर पक्षकार वेद प्रकाश गर्ग आदि कुल 54 व्यक्तियों के द्वारा मा0 उच्च न्यायालय में रिट याचिका संख्या 29546/2003 वेद प्रकाश गर्ग व अन्य बनाम अपर जिला जज व अन्य (संलग्नक संख्या ..03..) दायर की गयी जिसमें मा0 न्यायालय ने अपने आदेश दिनांक 14.02.2006 में यह आदेश किया कि रिट याचिका स्वीकार की जाती है और आदेश दिनांक 31.05.2003 निरस्त किया जाता है। आदेश में उल्लिखित क्रियान्वयक शब्दावली इस प्रकार से है "In view of the fact that the State Government has it self taken a decision that the land in question should be treated as land belonging to the Revenue Department of the State Government on such mining operations should be permitted as was being done earlier, it is directed that the application for renewal of the mining leases of the petitioners shall be considered and decided by the respondent no 3, in accordance with law, expeditiously preferably within six weeks from the date of production of a certified copy of this order before the said respondent."

इस प्रकार उक्त आदेश के निरस्त होने के फलस्वरूप इससे सम्बन्धित प्रकरणों में व्यक्तिगत खातेदारों, खनन पट्टाधारकों आदि के पक्ष में पारित आदेश दिनांक 30.09.1994 पुनर्स्थापित हो गया एवं तदनुसार व्यक्तिगत खातेदारों, पट्टाधारकों के कतिपय गाटों को राज्य सरकार के पक्ष में धारा 4 से पृथक करके दिये जाने सम्बन्धी आदेश पुनर्जीवीत हो गया। उक्त आदेश के विरुद्ध पुनः स्टेट आफ यू0पी0 व 2 अन्य के द्वारा स्पेशल अपील डिफेक्टिव 63/2018 (संलग्नक संख्या-..04..) दायर की गयी। जिसे मा0 उच्च न्यायालय (डबल बेंच) ने 11 वर्ष 320 दिन का विलम्ब मानते हुए याचिका को दिनांक 02.02.2018 को निरस्त कर दिया। मा0 उच्च न्यायालय द्वारा पारित आदेश दिनांक 02.02.2018 के विरुद्ध स्पेशल लीव पीटिशन सिविल डायरी नम्बर 33675/2018 स्टेट आफ उ0प्र0 व अन्य बनाम वेद प्रकाश गर्ग व अन्य मा0 उच्चतम

न्यायालय में दायर हुआ, जिसमें मा0 उच्चतम न्यायालय ने दिनांक 22.11.2018 को स्पेशल लीव पीटिशन को निरस्त कर दिया (संलग्नक संख्या-..05..)। इसी मध्य कतिपय अन्य पक्षकार रविन्द्र कुमार सिंह व अन्य ने अपर जिला जज, अनपरा सोनभद्र के उसी आदेश दिनांक 31.05.2003 के विरुद्ध एक अन्य रिट याचिका संख्या 41578/2007 रविन्द्र कुमार सिंह व अन्य बनाम अपर जिला जज, सोनभद्र व अन्य दायर किया (संलग्नक संख्या-..06..) जिसमें 04.10.2007 को आदेश पारित हुआ। इस याचिका में अपर जिला जज, अनपरा सोनभद्र द्वारा पारित आदेश 31.05.2003 के विरुद्ध याचीगण द्वारा याचिका प्रस्तुत की गई थी। इस याचिका को मा0 उच्च न्यायालय ने 04.10.2007 को निरस्त कर दिया गया। इस आदेश में मा0 उच्च न्यायालय द्वारा रिट याचिका संख्या 29546/2003 में पारित आदेश दिनांक 14.02.2006 का भी उल्लेख किया गया। मा0 उच्च न्यायालय ने रिट पिटिशन संख्या 41578/2007 के प्रस्तर 28 में जो आदेश दिनांक 04.10.2007 पारित किया गया उसका क्रियान्वयक अंश इस प्रकार से उल्लिखित है कि "The last submission of the petitioners that Section 20 notification having not been issued, the State Government was fully entitled to treat the land as land not belonging to the Forest Department and the same as belonging to the Revenue Department. As noted above, after issuance of notification under Section 4, Section 5 comes into play and prohibition of accrual of any right operate after issuance of notification under section 4. The issue as to whether the State Government by any administrative decision can take a decision contrary to Section 5 of the Forest Act has already been discussed above. The fact that Section 20 notification has not yet been issued does not empower the State Government to take an administrative decision to treat the land included in notification under Section 4 as a land belonging to the Revenue Department or to permit mining in the said land. Thus non issuance of notification under Section 20 of the Forest Act does not empower the State Government to take any administrative decision to permit any mining operation in the land included in the notification under section 4 of the Forest Act.

In view of the foregoing discussions, none of the submissions of learned Counsel for the petitioners has any substance. The petitioners are not entitled for any relief as claimed in the writ petition.

The writ petition is dismissed."

मा0 नेशनल ग्रीन ट्रिबुनल के आदेश दिनांक 13.07.2018 में अपर जिला जज, सोनभद्र के आदेश दिनांक 31.05.2003 के प्रति मा0 उच्च न्यायालय द्वारा रिट याचिका वेद प्रकाश गर्ग व अन्य बनाम अपर जिला जज व अन्य याचिका संख्या 29546/2003 में पारित निर्णय दिनांक 14.02.2006 तथा मा0 उच्च न्यायालय द्वारा पारित रिट पिटिशन 41576/2007 रविन्द्र कुमार सिंह व अन्य बनाम अपर जिला जज व अन्य में पारित आदेश दिनांक 04.10.2007 तथा मा0 उच्च न्यायालय (डबल बेन्च) द्वारा स्पेशल याचिका डिफेक्टिव 63/2019 स्टेट आफ यू0पी0 व 2 अन्य बनाम वेद प्रकाश गर्ग व 55 अन्य में पारित आदेश दिनांक 02.02.2018 तथा मा0 उच्चतम न्यायालय द्वारा स्पेशल लीव पीटिशन सिविल जायरी नम्बर 33675/2018 स्टेट आफ उ0प्र0 व अन्य बनाम वेद प्रकाश गर्ग व अन्य में पारित निर्णय 22.11.2018 सम्भवतः मा0 नेशनल ग्रीन ट्रिबुनल के संज्ञान में पक्षकारों द्वारा न लाये जाने के कारण संज्ञानित नहीं हो सके है। मा0 उच्च न्यायालय द्वारा रिट पिटिशन संख्या 29546/2003 में पारित आदेश दिनांक 14.02.2006 तथा मा0

उच्च न्यायालय इलाहाबाद द्वारा रिट याचिका संख्या 41576/2007 में पारित आदेश दिनांक 04.10.2007 एक दूसरे के प्रतिकूल है। मा0 उच्च न्यायालय के उक्त आदेश दिनांक 14.02.2006 के द्वारा अपर जिला जज सोनभद्र के आदेश दिनांक 31.05.2003 को निरस्त कर दिया गया जबकि आदेश दिनांक 04.10.2007 के द्वारा अपर जिला जज सोनभद्र के आदेश दिनांक 31.05.2003 के विरुद्ध दायर की गयी याचिका को निरस्त कर दिया गया। इन सभी स्थितियों को मा0 नेशनल ग्रीन ट्रिब्यूनल के संज्ञान में आदर पूर्वक लाये जाने की आवश्यकता है।

मा0 नेशनल ग्रीन ट्रिब्यूनल द्वारा मा0 उच्च न्यायालय इलाहाबाद द्वारा पारित उपरोक्त सन्दर्भित तीनो आदेश एवं मा0 सर्वोच्च न्यायालय द्वारा पारित सन्दर्भित आदेश को संज्ञान में लेकर अन्य कोई आदेश/दिशा-निर्देश जारी किया जाता है तो तदनुसार जिला प्रशासन व वन विभाग उसके अनुपालन में तदनुसार कार्यवाही करेगा। वर्तमान में माननीय नेशनल ग्रीन ट्रिब्यूनल ने अपने आदेश दिनांक 13.07.2018 व 25.07.2018 में जो निर्देश दिया है उसके शब्दशः अनुपालन हेतु जिला मजिस्ट्रेट/जिला प्रशासन (खनन विभाग) जो पट्टों की स्वीकृति एवं निरस्तीकरण हेतु सक्षम प्राधिकारी है व वन विभाग से अपेक्षा करते हुए निर्देश दिये गये हैं। वर्तमान में उल्लिखित 6 आवेदकों में से केवल 1 (नीलकंठ माइनिंग, आ0नं0 5593क, रकबा 4.000 हे0) का एग्रीमेन्ट हुआ है तथा शेष 05 के एग्रीमेन्ट अभी जिला प्रशासन द्वारा नहीं किये गये हैं। जिस 1 आवेदक के पट्टे का एग्रीमेन्ट हुआ है उसका भी खनन अनुज्ञा एम0एम0-11 अभी जारी नहीं हुआ है तथा उसका प्रकरण शासन/निदेशालय स्तर पर विचाराधीन है।

31/12/18
(डॉ० प्रभाकर दूबे)
मुख्य वन संरक्षक
विन्ध्याचल मण्डल, मीरजापुर।

31/12/18
(सुस्ती-मंगीहर लाल)
आयुक्त
विन्ध्याचल मण्डलमीरजापुर।

-TRUE COPY-

Compliance report of the order of Hon'ble National Green Tribunal in reference to O.A. No. 474/2019 (IA No. 340/2019) dated 24/05/2019 Surendar Singh Vs Ministry of Environment, Forest and Climate Change and Others.

Contents of titled order:

"Prayer in the application is to cancel the environmental clearance granted in favour of Respondent Nos. 5 to 14 in District Mirzapur in violation of order of the Tribunal dated 13.09.2018 in O.A. No. 186/2016, Satendra Pandey Vs Ministry of Environment, Forest and Climate Change & Ors.,"

"Before proceeding further in the matter, we require a factual and action taken from the State Environmental Impact Assessment Authority (SEIAA) and the State Pollution Control Board (SPCB) within one month by e-mail at judicial-ngt@gov.in. The nodal agency will be the SEIAA for coordination and compliance.

Pending further consideration, there will be stay of operation of the leases granted in favour of Respondent Nos. 5 to 14, M/s Bol Bam Ent Bhatta, Astha Traders, Shri Digvijai Singh, Smt. Jai Prabha Devi, W/o Shri Kumud Kumar, M/s Jai Maa Stone Works, M/s Vindhya Wasini Traders, Smt. Malti Devi, W/o Shri Gulab Das, Shri Abhay Kumar Singh, M/s Maa Sheetla Stone, Shri Pradeep Kumar in District Mirzapur, U.P.

Action Taken:

In compliance of titled project order of Hon'be NGT dated 24/05/2019 Member Secretary, SEIAA Lucknow formed a following committee vide letter no. 236/एनजी/SEAC dated 13/06/2019. The committee gone through files of 10 proponent as mentioned in NGT order dated 24/05/2019 on 03/07/2019.

1. Meraj Uddin, Member, SEAC
2. Radhey Shyam, Regional Officer, UPPCB, Sonbhadra

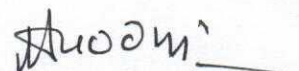
Inspection observation:

The Officer incharge Khanij Anubhag District magistrate Office Produced files of following Proponent before the committee.

1. M/s Bol Bam Ent Bhatta
2. Astha Traders
3. Shri Digvijai Singh
4. Smt. Jai Prabha Devi, W/o Shri Kumud Kumar
5. M/s Jai Maa Stone Works
6. M/s Vindhya Wasini Traders
7. Smt. Malti Devi, W/o Shri Gulab Das
8. Shri Abhay Kumar Singh
9. M/s Maa Sheetla Stone
10. Sri Pradeep Kumar

The committee gone through the files and noticed following observation.,

- I. In above list EC was granted to 09 proponent on 23/10/2018 and to one proponent on 30/10/2018 by DEIAA as per procedure adopted by DEIAA.
- II. Lease deed of above area has been finalized after demarcation of the area as per rules by Officer incharge Khanij Anubhag District magistrate Office.
- III. The mines officer told that as per order of NGT dated 24/05/2019 the above mentioned lease areas were cancelled by Khanij Anubhag of District Magistrate Office by order District Magistrate 06/06/2019 (Annexure-1 - 10).
- IV. It was explained by the Officer in-charge Khanij Anubhag District Magistrate office Mirzapur that as per order of Hon'ble NGT dated 13/09/2018.

"The MoEF & CC shall therefore, take appropriate steps to revise the procedure laid down in the impugned Notification dated 15th January, 2016 in terms of the above directions and observations so that it is conformity with the letter and spirit of the directions passed by the Hon'ble Supreme Court in Deepak Kumar(supra)."

The Khanjij Anubhag of District magistrate waited for notification from MoEF&CC

- (Annexure-11) *Shri M*
- V. It was clearly directed by the Hon'ble NGT order dated 11/12/2018 issued.
- "Grievance in this application is that there is non-compliance of the judgment of this Tribunal dated 13.09.2018 in Original Application No.-186/2016, Satendra Pandey Vs Ministry of Environment, Forest & Climate Change & Anr. The Hon'ble Supreme Court, vide judgment in Deepak Kumar Vs State of Haryana & Ors. (2012) 4 SCC 629, required proper Environmental Clearance before grant of leases of minor minerals, including sand mining. Vide Notification dated 15.001.2016 issued by MoEF & CC, environmental clearance was to be given by the District Environmental Impact Assessment Authority (DEIAA) which defeat the Hon'ble Supreme Court."
- VI. As per order of NGT dated 11/12/2018 a joint meeting of SEIAA and SEAC was held on 05/02/2019 and following decision was taken:
- "In compliance of MoEF & CC, GOI, OM dated 12.12.2018, it is decided that all mining cases of minor minerals having 0 to 5 ha area will be appraised by UP-SEIAA for Environment Clearance. All concerned project proponents will apply to UP-SEIAA in Form-1 with other required supporting documents on online MoEF&CC website www.environmentclearance.nic.in to process the application for grant of prior environment clearance with immediate effect till further order"
- VII. The Director, Directorate Environment and Director, Geology and Mining by their orders dated 14-02-2019 requested all the District Magistrate to act as per decision taken by joint committee of SEIAA and SEAC on 05/02/2019 as follows. (Annex-12) *Shri M*
- "In compliance of MoEF & CC, GOI, OM dated 12.12.2018, it is decided that all mining cases of minor minerals having 0 to 5 ha area will be appraised by UP-SEIAA for Environment Clearance. All concerned project proponents will apply to UP-SEIAA in Form-1 with other required supporting documents on online MoEF&CC website www.environmentclearance.nic.in to process the application for grant of prior environment clearance with immediate effect till further order"
- VIII. In view of order of Hon'ble NGT dated 24/05/2019 this committee is of opinion that all ECs issued by DEIAA after Hon'ble NGT order dated 13/09/2018 between the lease area 0-5 ha should take fresh EC from SEIAA as per norms.
- IX. All Mining activity remains suspended. So in this period procedure may be adopted for seeking fresh EC of the areas between 0-5 ha as per NGT.
- Orders in this regard necessary order should be disbursed immediately to obey the procedure as per NGT order dated 13.09.2018
- X. None of the proponent has submitted the compliance report of EC conditions.
- Considering this, the committee is in view that appropriate action may be initiated for violation of E.C. conditions and degradation of surrounding environment by mining activities.

(Signature)
 (Shri Radhey Shyam),
 Regional Officer, UPPCB,
 Sonbhadra

(Signature)
 (Shri Meraj Uddin), 26/7/11,
 Member, SEAC

(Signature)
 // TRUE COPY //

**BEFORE THE NATIONAL GREEN TRIBUNAL,
PRINCIPAL BENCH, NEW DELHI**

Original Application No. 781/2018


IN THE MATTER OF :

Amit Pandey Vs. State of U.P. & Ors.

**CORAM : HON'BLE MR. JUSTICE ADARSH KUMAR GOEL, CHAIRPERSON
HON'BLE DR. NAGIN NANDA, EXPERT MEMBER**

Present: Applicant: Mr. S.S. Kulshreshta, Sr. Adv. with Ajeet Pandey, Adv.

	Date and Remarks	Orders of the Tribunal
	Item No. 16 October 25, 2018 dv	<p>1. The applicant seeks closing down the mining leases operating in the forest area on the forest land by respondents no. 5 to 9, i.e., Neel Kant Mining, Sandhuri, Chopan, Sair Ram Enterprises, District Sonebhadra (UP), Gyanendra Tripathi, District Sonebhadra, C.S. Infrastructure Limited, District Balia and Amit Enterprises, District Sonebhadra.</p> <p>2. Learned Counsel appearing for the applicant points out that in respect of the same area, this Tribunal has passed order dated 13.07.2018 in <i>Original Application No. 429/2016 in All India Kalmur People's Front Vs. The State of U.P. & Ors.</i> directing the State of Uttar Pradesh to prohibit all the leases on the forest land.</p> <p>3. Since it is stated that the leases have been granted or continued in violation of the order of this Tribunal, steps will have to be taken to cancel such leases as have been granted in violation of order of this Tribunal.</p> <p>4. Accordingly, we direct the Commissioner, Varanasi alongwith the concerned authority of the Forest Department to look into the factual aspects and take such steps as may be necessary to enforce the order of this</p>

	<p>Item No. 16</p> <p>October 25, 2018 dv</p>	<p>Tribunal dated 13.07.2018 within two months from the date of receipt of a copy of this order.</p> <p>5. The applicant is at liberty to furnish a copy of this order alongwith a complete set of papers to the Commissioner, Varanasi for compliance.</p> <p>6. The applications stands disposed of.</p> <p style="text-align: right;">  , CP (Adarsh Kumar Goel) </p> <p style="text-align: right;">,EM (Dr. Nagin Nanda) </p> <p style="text-align: right;">25.10.2018</p>
--	---	---



// TRUE COPY //

ANNEXURE-R-7

Item No.7

Court No. 1

BEFORE THE NATIONAL GREEN TRIBUNAL
PRINCIPAL BENCH, NEW DELHI

Original Application No. 781/2018

Amit Pandey

Applicant(s)

Versus

State of U.P. &Ors.

Respondent(s)

Date of hearing: 28.11.2018

CORAM:HON'BLE MR. JUSTICE ADARSH KUMAR GOEL, CHAIRPERSON
HON'BLE MR. JUSTICE RAGHUVENDRA S. RATHORE, JUDICIAL MEMBER
HON'BLE MR. JUSTICE S.P. WANGDI, JUDICIAL MEMBER
HON'BLE MR. JUSTICE K. RAMAKRISHNAN, JUDICIAL MEMBER
HON'BLE DR. NAGIN NANDA, EXPERT MEMBER

For Applicant(s):

For Respondents (s):Mr. AnkitVerma, Advocate for State of UP

ORDER

As per letter received from District Magistrate, District Sonbhadra, the area in question falls within the jurisdiction of Commissioner, Vindhyachal Divison, Mirzapur, while order of this Tribunal was directed to Commissioner, Varanasi.

If it was so, the Commissioner Varanasi should have either taken appropriate steps in the matter of looking into the facts, as directed, or Commissioner Vindhyachal Division Mirzapur should have done the needful.

We, thus do not appreciate the stands taken that neither of the two was to comply with the directions of this Tribunal till further clarification.

Accordingly, we direct the Commissioner, Mirzapur to comply with the order dated 25-10-2018. The same may now be done at the earliest and a report be furnished to the Tribunal by e-mail at ngt.filing@gmail.com on or before 31st December, 2018.

It is made clear that if there is further non-compliance, this Tribunal will be left with no other option except to take coercive measures, including directing prosecution of the person responsible for non-compliance.

List the matter for further consideration on 4th January, 2019.

Learned counsel for the State may convey the order for compliance to the concerned authorities.

Adarsh Kumar Goel, CP

Raghuvendra S. Rathore, JM

S.P. Wangdi, JM

K. Ramakrishnan, JM

Dr. Nagin Nanda, EM

November 28, 2018



// TRUE COPY //

Item No. 06

Court No. 1

**BEFORE THE NATIONAL GREEN TRIBUNAL
PRINCIPAL BENCH, NEW DELHI**

Original Application No. 781/2018

Amit Pandey

Applicant(s)

Versus

State of U.P. & Ors.

Respondent(s)

Date of hearing: 04.01.2019

CORAM: HON'BLE MR. JUSTICE ADARSH KUMAR GOEL, CHAIRPERSON
HON'BLE MR. JUSTICE S.P. WANGDI, JUDICIAL MEMBER
HON'BLE MR. JUSTICE K. RAMAKRISHNAN, JUDICIAL MEMBER
HON'BLE DR. NAGIN NANDA, EXPERT MEMBER

For Applicant(s):

For Respondent (s):

ORDER

1. Vide order dated 25.10.2018, the issue of closing down the mining leases operating in forest area on forest land in district Sonbhadra in the State of Uttar Pradesh was considered in the light of earlier order dated 13.07.2018 in *Original Application No. 429/2016 in All India Kalmur People's Front Vs. The State of U.P. & Ors.* directing prohibition of leases on the forest land. This Tribunal directed the Commissioner, Varanasi to furnish a factual report in the matter.
2. The Commissioner, Varanasi took the view that the area falls in the jurisdiction of Commissioner, Mirzapur.
3. Accordingly, vide order dated 28.11.2018, this Tribunal directed the Commissioner, Mirzapur to furnish a report.
4. A report dated 31.12.2018 has been now received from the Commissioner, Mirzapur and Chief Conservator of Forests, Mirzapur. In the said report, reference is made to the order of the Allahabad High Court dated 14.02.2006 in the *Writ Petition No. 29546/2003*,

Ved Prakash Garg & Ors. Vs. Additional District Judge & Ors. against which appeal was dismissed on 02.02.2018 being *Defective Special Appeal No. 63/2018* on the ground of delay of 11 years and 320 days and SLP was dismissed by the Hon'ble Supreme Court on 22.11.2018 being *Special Leave Petition (Civil) Diary No(s). 33675/2018, State of Uttar Pradesh & Ors. Vs. Ved Prakash Garg & Ors.* It was further noted that this Tribunal considered the matter vide order dated 13.07.2018 in *Original Application No. 429/2016 in All India Kalmur People's Front Vs. The State of U.P. & Ors.* and in the present matter. Reference has also been made to the order of the High Court dated 04.10.2007 in *Writ Petition No. 41578/2007, Ravinder Kumar Singh & Ors. Vs. Additional District Judge, Sonbhadra & Ors.* holding that no mining operation was permissible on the land included in the Notification under Section 4 of the Forest Act, 1927.

5. This Tribunal, in the order dated 13.07.2018 noticed all the above orders and held that in view of order of the High Court dated 04.10.2007, order dated 14.02.2006 could not be followed.
6. The Commissioner, Mirzapur as well as Chief Conservator of Forests, Mirzapur have concluded that orders of the Tribunal dated 13.07.2018 and 25.07.2018 are required to be complied with.
7. We are in agreement with the views expressed in the above report and direct that the said report be fully complied with.
8. We direct the Commissioner, Mirzapur to furnish further action taken report in the matter on or before 28.02.2019 by e-mail at ngt.filing@gmail.com.
9. A copy of this order be sent to the Commissioner, Mirzapur for compliance by e-mail.

List again on 25th March, 2019.

Adarsh Kumar Goel, CP

S.P. Wangdi, JM

K. Ramakrishnan, JM

Dr. Nagin Nanda, EM

January 04, 2019
Original Application No. 781/2018
DV



// TRUE COPY //

ANNEXURE-R-9

मा0 नेशनल ग्रीन ट्रिब्यूनल, प्रिन्सपल बेंच नई दिल्ली में योजित मूल प्रार्थना पत्र संख्या-781/2018 में पारित आदेश दिनांक 04.01.2019 के अनुपालन आख्या का प्रेषण।

मा0 नेशनल ग्रीन ट्रिब्यूनल, प्रिन्सपल बेंच, नई दिल्ली द्वारा अमित कुमार पाण्डेय बनाम उ0प्र0 सरकार व अन्य में दिनांक 04.01.2019 को आदेश पारित करते हुए निर्देशित किया गया कि इस न्यायालय द्वारा पूर्व में पारित आदेश दिनांक 13.07.2018 तथा 25.07.2018 (संभवतः टंकण त्रुटि के कारण आदेश में आदेश दिनांक 25.10.2018 के स्थान पर आदेश दिनांक 25.07.2018 अंकित हो गया है।) का पूरी तरह अनुपालन कराते हुए आख्या दिनांक 28.02.2019 तक उपलब्ध कराये जाने के निर्देश दिये गये हैं।

उक्त आदेश के क्रम में इस कार्यालय के पत्र संख्या-08/आ0लि0/सं0वि0आ0/एनजीटी/2019 दिनांक 22.02.2019 द्वारा मा0 ट्रिब्यूनल के उपरोक्त दोनो आदेशों का पूर्णतः अनुपालन कर अनुपालन आख्या उपलब्ध कराने हेतु जिलाधिकारी, सोनभद्र को निर्देशित किया गया। तत्क्रम में जिलाधिकारी, सोनभद्र ने अपने पत्रांक-2988/खनिज/2019 दिनांक 25.02.2019 द्वारा अवगत कराया है कि मा0 नेशनल ग्रीन ट्रिब्यूनल, प्रिन्सपल बेंच, नई दिल्ली पारित आदेश दिनांक 13.07.2018 व 25.10.2018 का अक्षरशः अनुपालन सुनिश्चित कर लिया गया है।

अतः जिलाधिकारी, सोनभद्र द्वारा प्रेषित अनुपालन आख्या संलग्न कर आवश्यक कार्यवाही हेतु प्रेषित है।

संलग्नक-यथोक्त।

Acl 26/2/19
(आनन्द कुमार सिंह)
आयुक्त
विन्ध्याचल मण्डल, मीरजापुर।

प्रेषक,

जिलाधिकारी,
सोनभद्र।

सेवा में,

आयुक्त,
विन्ध्याचल मण्डल,
मीरजापुर।

पत्रांक 2986 / खनिज / 2019
विषय:-

दिनांक 25/02/2019

मा0 नेशनल ग्रीन ट्रिब्यूनल, प्रिन्सपल बेंच, नई दिल्ली में योजित मूल प्रार्थना पत्र संख्या 781/2018 में पारित आदेश दिनांक 13.07.2018 व 25.07.2018 के तत्काल अनुपालन के सम्बन्ध में।

महोदय,

कृपया उपर्युक्त विषयक अपने कार्यालय के पत्र संख्या-08/आ0लि0/सं0वि0आ0/एनजीटी/2019 दिनांक 22 फरवरी, 2019 का सन्दर्भ ग्रहण करने का कष्ट करें, जिसके द्वारा मा0 नेशनल ग्रीन ट्रिब्यूनल के आदेश दिनांक 13.07.2018 व आदेश दिनांक 25.07.2018 का पूरी तरह से अनुपालन सुनिश्चित कराते हुए अनुपालन आख्या दिनांक 25.02.2019 तक उपलब्ध कराने के निर्देश दिये गये हैं। इस सम्बन्ध में अवगत कराना है कि दिनांक 25.07.2018 को मा0 ट्रिब्यूनल द्वारा इस प्रकरण में कोई आदेश पारित नहीं किया गया है, अपितु दिनांक 25.10.2018 को आदेश पारित किया गया है। सम्भवतः टंकण त्रुटि वश 25.10.2018 के स्थान पर 25.07.2018 टंकित हो गया है। मा0 ट्रिब्यूनल द्वारा पारित आदेश दिनांक 13.07.2018 एवं 25.10.2018 के कार्यकारी अंश तथा अनुपालन की स्थिति निम्नवत् है:-

1. आदेश दिनांक 13.07.2018 :-

ओरिजनल अप्लीकेशन नम्बर-429/2016 आल इण्डिया कैमूर पिपुल्स फ्रंट बनाम उ0प्र0 राज्य व अन्य में राष्ट्रीय हरित न्यायाधिकरण, नई दिल्ली द्वारा दिनांक 13.07.2018 को निम्नलिखित आदेश पारित किया गया है:-

1. This petition was filed on 04th August, 2016 seeking immediate prohibition of illegal mining with the following prayers:-
 - (i) "Direct the respondents-authorities to put immediate ban/prohibition upon continued illegal mining and projects within 1 or 2 km from Kaimur Wildlife Sanctuary situated in Village-Billi Markunid (about 80 mining leases of Dolo Stone/Lime Stone; Villages Vardiya and Sinduriya (about 15 mining leases of Dolo Stone/ Lime Stone), Villages-Agorikhas, Kota, Redia, Gurdah, Sasnai, Kargara, Mitapur, Badagoan and Patbadh (about 15 mining leases of Sand/morrum), District-Sonebhadra with an immediate effect in compliance of the orders passed by the Hon'ble Supreme Court in case of Goa Foundation Vs. Union of India;
 - (ii) Direct the respondents-authorities to cancel all mining leases conducted in Villages-Salkhan, Bahuar, Dugaulia, Hinauti and Julauli Colony (8 mining leases of Sand Stone) within 10 km. Of the periphery of Kaimur Wildlife Division situated in District Mirzapur and Robersganj Range and Ghorawal Range of Kaimur Wildlife Sanctuary, District Sonebhadra with an immediate effect which is in contravention of Ministry's guidelines and orders of the Hon'ble Supreme Court to the effect that no mining leases .

....2...

(2)

(iii) Direct the respondents-authorities to restore Kaimur Wildlife Sanctuary situated in District-Sonebhadra free from any mining work in order to protect further damage to environment and Wildlife.

2. In pursuance of Notice issued by this court, a notification dated 20th March, 2017 has been filed by the Ministry of Environment, Forest and Climate Change declaring the area in question as Eco-Sensitive Zone under section 3(3)(2) of Environment (Protection) Act, 1986.
3. In the affidavit of State of Uttar Pradesh dated 18th April, 2018 it was stated that out of 119 leases 33 are operational outside the Eco-Sensitive Zone.
4. In the Rejoinder affidavit filed on behalf of the Applicant on 28th May, 2018, it has been pointed out as follows:-

"That the contents of para 5 of the affidavit is absolutely wrong, hence strongly denied in as much as the averments to the effect that 33 mining leases out of 119 mining leases are operational in the district-Sonebhadra are not only contrary to the averments made in counteraffidavit filed by the respondents 8 and 9 namely Divisional Forest Officers, Mirzapur and Senbhadra wherein it is stated that out of list of 118 entitles leases of 42 entitles have already expired and as far as remaining 76 entitles there are about 17 entitles which are on the land which were never notified as forest land under any provisions under Indian Forest Act, 1927 and remaining 59 leases are pertaining to that land which at one point of time in 1969 was covered under Section 4 notification of Indian Forest Act, 1927 wherein the State had proposed to constitute the said land as reserved forest but also judgment/order dated 04.05.2016 passed by this Hon'ble Tribunal in M.A. No. 1166 of 2015 in a similarly situated land declared as forest land under Section 4 of the Indian Forest Act, 1927, which is general in nature and the same shall have to be complied with. The operative portion of the same judgment is quoted as under:

"The State of U.P. shall cancel all mining leases whether fresh or renewal and all other non-forestry activities on the area notified under Section 4 of the Forest Act for which settlement rights have been finalized pursuant to the judgment in Banwasi Sewa Ashram case dated 20th November, 1986 and shall ensure that there is no nonforestry activity including mining in any such land without the permission/approval of the Hon'ble Supreme Court."

5. Further in pursuance of said direction of this Hon'ble Tribunal, the forest department has already initiated a high level enquiry for ascertaining the land liable to be declared as reserve forest and all the mining NOCs issued earlier related to said section 4 area have been suspended pending such enquiry but till date mining leases are still subsisting as the same has not been cancelled so far and nothing further has been mentioned that when the enquiry will be completed by the State of U.P. as from this affidavit it is clear that the State of U.P. has not initiated any action in this regard and on the contrary has stated that 33 mining leases are still operating. As 33 mining leases are operating contrary to said order dated 04.05.2016, hence the State of U.P. may be directed to cancel 33 such mining leases also which are operating on an area notified under section 4 of the Indian Forest Act, 1927.
 6. On being confronted, the learned Counsel for the State is unable to explain as to how in the face of order dated 04th May, 2016, 33 mining leases can be allowed to continue. Only explanation is that these lease are now 29 not 33 and the same are not in forest area.
- We find the following from the affidavit of the State dated 23rd January, 2017.
- "Remaining 59 leases are pertaining to that land which, at one point of time in 1969, was covered under Section-4 notification of Indian Forest Act, 1927. Wherein the State had proposed to constitute the said land as reserved forest. However, the process of declaration of reserved forest in terms of section 20 could not take place. However, still the

....3...

(3)

fact remains that in view of the Forest (Conservation) Act, 1980 the nature of the said land will have to undergo the rigor of certain approvals from different authorities for their uses of non-forestry activities and in that background the answering respondents are required to be consulted for its NOC in case the non-forestry activities have to be undertaken in such land despite the fact that the said land is yet to be notified under section 20 of the Indian Forest Act, 1927. Further in addition to the above it is necessary to point out as stated in the foregoing paragraphs that M.A. No. 1166 of 2016 n WPC 200 of 1995 (T.N. Godaverman Vs. Union of India) by 04.05.2016 this Hon'ble Tribunal in relation to similarly situated Section 4 land has passed detailed judgment which is general in nature and the same shall have to be complied with. The operative portion of the said judgement reads as under:-

"The State of U.P. shall cancel all mining leases whether fresh or renewal and all other non-forestry activities on the areas notified under Section 4 of the forest Act for which settlement rights have been finalized pursuant to the Judgment in Banavasi Sewa Asram case dated 20th November, 1986 and shall ensure that there is no non-forest activity including mining in any such land without the permission/approval of the Hon'ble Supreme Court."

As stated in the preceding paragraph wherein Additional District Judge, Obra, had decided the cases in the year 1994 and upheld the decision of Forest Settlement Officer, being aggrieved by the judgement and order of Additional District Judge, Forest Department filed various review applications as per judgement and order passed by Hon'ble Supreme Court in Writ Petition No. 1061 of 1982 Banwasi Sewa Ashram V/s. State of U.P. The Learned A.D.J. Anpara at Obra decided all the review applications filed by Forest Department on 31-5-03 and decided all the disputed plots in above review in favour of Forest Department.

Therefore, as per direction of Hon'ble Tribunal in M.A. No. 1166 of 2015 the forest department has already initiated a high level enquiry for ascertaining the land liable to be declared as reserved forest as per order of Hon'ble NGT and all the mining NOCs issued earlier related to the said section 4 area have been suspended pending such enquiry."

7. In view of the above admission that the leases in question are on land covered by the notification under section 4 of Indian Forest Act, 1927 for which notification under section 20 of Indian Forest Act, 1927 has not yet been issued, the plea that the existing leases are valid cannot be sustained. The State of Uttar Pradesh must, as per earlier order of this court and the legal position mentioned above, prohibit forthwith all the leases in the said area.
8. Moreover, Hon'ble Supreme Court has prohibited mining within 1 km. of the boundary of Wildlife Sanctuaries and National Parks irrespective of the extent of ESZ. Beyond 1 km of the boundary of the Prohibited Area upto the extent of ESZ, if notified, or upto 10 km if ESZ not notified, all the proposals requiring environmental clearance are to be referred to the National Board for Wildlife.

With the above directions the Original Application No. 429 of 2016 stands disposed of.

M.A. No. 193 of 2017 and M.A. No. 199 of 2017

These applications do not survive for consideration as the main petition itself stands disposed of.

The M.A. No. 193 of 2017 and M.A. No. 199 of 2017 also stand disposed of accordingly.

(4)

अनुपालन की स्थिति:-

मा0 एन0जी0टी0 में प्रस्तुत उपरोक्त मूल आवेदन में आवेदक/याची द्वारा जनपद सोनभद्र में कार्यरत 119 खनन पट्टों की सूची प्रस्तुत की गयी थी। उक्त सूची में से आदेश दिनांक तक 33 खनन पट्टे ही कार्यरत थे, शेष 86 खनन पट्टे की अवधि समाप्त होने अथवा अन्य कारणों से बन्द थे। 33 खनन पट्टों में से भी 03 खनन पट्टे की अवधि इस कार्यलय द्वारा आदेश जारी किये जाने के समय तक समाप्त हो गये थे। 30 खनन पट्टों में 29 खनन पट्टों में दिनांक 29.08.2018 को तथा 01 खनन पट्टे में दिनांक 06.12.2018 को खनन एवं परिवहन का कार्य प्रतिबन्धित कर दिया गया है। कतिपय पट्टाधारकों द्वारा कार्यालय में इस आशय का प्रार्थना पत्र प्रस्तुत किया गया था कि उनके खनन पट्टे के अन्तर्गत आने वाला क्षेत्र कभी भी धारा-4 में विज्ञापित नहीं रहा है। पट्टाधारकों द्वारा प्रस्तुत प्रार्थना पत्र के क्रम में प्रभागीय वनाधिकारी, ओबरा से आख्या प्राप्त की गयी। प्रभागीय वनाधिकारी द्वारा अभी तक कुल 04 खनन पट्टों के सम्बन्ध में इस आशय की आख्या प्रस्तुत की गयी है कि इन खनन पट्टों के अन्तर्गत आने वाले क्षेत्र धारा-4 से प्रभावित नहीं है। प्रभागीय वनाधिकारी, ओबरा की आख्या के आधार पर 03 खनन पट्टा क्षेत्र में खनन कार्य की अनुमति प्रदान की गयी है तथा 01 के सम्बन्ध में अभी आदेश पारित नहीं किया गया है। इस प्रकार मा0 एन0जी0टी0 द्वारा पारित आदेश दिनांक 13.07.2018 का अक्षरशः अनुपालन सुनिश्चित कर लिया गया है।

2. आदेश दिनांक 25.10.2018

ओरिजिनल अप्लीकेशन नम्बर-781/2018 अमित पाण्डेय बनाम उ0प्र0 राज्य व अन्य में मा0 एन0जी0टी0 द्वारा दिनांक 25.10.2018 को निम्नलिखित आदेश पारित किये गये हैं:-

1. The applicant seeks closing down the mining leases operating in the forest area on the forest land by respondents no. 5 to 9, i.e., Neel Kant Mining, Sandhuri, Chopan, Sair Ram Enterprises, District Sonebhadra (UP), Gyanendra Tripathi, District Sonebhadra, C.S. Infrastructure Limited, District Balia and Amit Enterprises, District Sonebhadra.
2. Learned Counsel appearing for the applicant points out that in respect of the same area, this Tribunal has passed order dated 13.07.2018 in Original Application No. 429/2016 in All India Kalmur People's Front Vs. The State of U.P. & Ors. directing the State of Uttar Pradesh to prohibit all the leases on the forest land.
3. Since it is stated that the leases have been granted or continued in violation of the order of this Tribunal, steps will have to be taken to cancel such leases as have been granted in violation of order of this Tribunal.
4. Accordingly, we direct the Commissioner, Varanasi alongwith the concerned authority of the Forest Department to look into the factual aspects and take such steps as may be necessary to enforce the order of this Tribunal dated 13.07.2018 within two months from the date of receipt of a copy of this order.
5. The applicant is at liberty to furnish a copy of this order alongwith a complete set of papers to the Commissioner, Varanasi for compliance.
6. The applications stands disposed of.

अनुपालन:-

प्रभागीय वनाधिकारी, ओबरा द्वारा प्राप्त अनापत्ति प्रमाण पत्र के आधार पर जनपद सोनभद्र के ग्राम-बिल्ली मारकुण्डी के 06 क्षेत्रों को खनन परिहार पर नियंत्रित किये जाने

....5...

(5)

हेतु विज्ञप्ति जारी करके ई-निविदा सह ई-नीलामी की प्रक्रिया सम्पन्न की गयी तथा निम्नलिखित 08 सर्वोच्च बोलीदाता के पक्ष में आशय पत्र जारी किया गया था:-

क्र० सं०	पट्टाधारक का नाम	तहसील	ग्राम	आराजी संख्या	खण्ड संख्या	रकबा (हे० में)
1	2	3	4	5	6	7
1.	साई राम इण्टरप्राइजेज, पता-20 91 नियर अक्षय मन्दिर सेक्टर-8,ओबरा, पिन-231219, जनपद सोनमद्र। चन्द्र भूषण गुप्ता मो०नं०-9918378106	रावदसगंज	बिल्ली मारकुण्डी	7536ग मि०	खण्ड-1	4.970
2.	ज्ञानेन्द्र त्रिपाठी, पता वार्ड नं०-21 अशोक नगर,रावदसगंज, पिन-231219, जनपद-सोनमद्र। ज्ञानेन्द्र त्रिपाठी मो०नं०-9919831800	रावदसगंज	बिल्ली मारकुण्डी	7536ग मि०	खण्ड-2	4.000
3.	सी०एस० इन्फ्राकन्सल्टेशन लिमि०, पता ग्राम व पो०-खनवार, जनपद-बलिया, पिन-221711मैनेजिंग डायरेक्टर-श्रीमती पुष्पा सिंह,	रावदसगंज	बिल्ली मारकुण्डी	7536ग मि०	खण्ड-3	4.000
4.	साई राम इण्टरप्राइजेज, पता-20 91 नियर अक्षय मन्दिर सेक्टर-8,ओबरा, पिन-231219, जनपद-सोनमद्र। चन्द्र भूषण गुप्ता मो०नं०-9918378106	रावदसगंज	बिल्ली मारकुण्डी	7536ग मि०	खण्ड-4	4.000
5.	अमित इण्टरप्राइजेज, पता 61 बारी डाला,डाला, पिन-231207, जनपद-सोनमद्र अमित मिस्तल मो०नं०-7317447170	रावदसगंज	बिल्ली मारकुण्डी	5593क	खण्ड-8	4.230
6.	नीलकण्ठ माइनिंग, पता मेन मार्केट वार्ड नं०-8 सेन्दुहरी, घोपन, पिन-231206, जनपद-सोनमद्र सुरेश गर्ग मो०नं०-9936394831	रावदसगंज	बिल्ली मारकुण्डी	5593क	खण्ड-9	4.000

उपरोक्त 08 सर्वोच्च बोलीदाताओं में से क्रमांक-6 पर अंकित नीलकण्ठ माइनिंग द्वारा पार्टनर-श्री सुरेश गर्ग द्वारा आवश्यक औपचारिकताएं पूर्ण कर देने के उपरान्त दिनांक 11.12.2018 को खनन पट्टा विलेख निष्पादित किया गया है, किन्तु मा० एन०जी०टी० के आदेश के अनुपालन में इस कार्यालय के पत्र संख्या-2864/खनिज/2019 दिनांक 05.02.2019 (छायाप्रति संलग्न) द्वारा निष्पादित खनन पट्टा क्षेत्र के अन्तर्गत खनन एवं परिवहन कार्य को अग्रिम आदेश तक प्रतिबन्धित कर दिया गया है। शेष 05 क्षेत्रों में से किसी का भी न तो निष्पादन किया गया है और न ही उन क्षेत्रों में खनन/परिवहन की अनुमति प्रदान की गयी है। इस प्रकार मा० एन०जी०टी० द्वारा पारित आदेश दिनांक 25.10.2018 का अक्षरशः अनुपालन सुनिश्चित कर लिया गया है।

कृपया आख्या आवश्यक कार्यवाही हेतु प्रेषित।
संलग्नक:- यथोपरि।

भवदीय,

(अंकित कुमार अग्रवाल)
जिलाधिकारी,
सोनमद्र।

कार्यालय जिलाधिकारी, सोनभद्र।
(खनिज विभाग)

दिनांक 05/02/2019

पत्रांक 2864 / खनिज / 2019

नीलकण्ठ माइनिंग / 109748,
पता मेन मार्केट वार्ड नं०-8 सेन्दुहरी,
चोपन, जनपद-सोनभद्र-231205,
श्री सुरेश गर्ग

आपके पक्ष में जनपद- सोनभद्र, तहसील- रावर्टसगंज स्थित ग्राम- बिल्ली मारकुण्डी के आ०सं०- 5593क, खण्ड-9, रकबा- 4.00 हे० क्षेत्र पर गिट्टी/बोल्डर (डोलो स्टोन) का दस वर्षीय नीलाम खननपट्टा दिनांक 11.12.2018 से 10.12.2028 तक की अवधि के लिये स्वीकृत किया गया है। ओरिजनल अप्लीकेशन सं०- 781/2018 अमित कुमार पाण्डेय बनाम उ०प्र० सरकार व अन्य में मा० एन०जी०टी० द्वारा दिनांक 04.01.2019 को निम्न आदेश पारित किये गये हैं :-

- 1- Vide order dated 25.10.2018, the issue of closing down the mining leases operating in forest area on forest land in district Sonbhadra in the State of Uttar Pradesh was considered in the light of earlier order dated 13.07.2018 in Original Application No. 429/2016 in All India Kalmur People's Front Vs. The State of U.P. & Ors. directing prohibition of leases on the forest land. This Tribunal directed the Commissioner, Varanasi to furnish a factual report in the matter.
- 2- The Commissioner, Varanasi took the view that the area falls in the jurisdiction of Commissioner, Mirzapur.
- 3- Accordingly, vide order dated 26.11.2018, this Tribunal directed the Commissioner, Mirzapur to furnish a report.
- 4- A report dated 31.12.2018 has been now received from the Commissioner, Mirzapur and Chief Conservator of Forests, Mirzapur. In the said report, reference is made to the order of the Allahabad High Court dated 14.02.2006 in the Writ Petition No. 29546/2003; Ved Prakash Garg & Ors. Vs. Additional District Judge & Ors. against which appeal was dismissed on 02.02.2018 being Defective Special Appeal No. 63/2018 on the ground of delay of 11 years and 320 days and SLP was dismissed by the Hon'ble Supreme Court on 22.11.2018 being Special Leave Petition (Civil) Diary No(s). 33675/2018, State of Uttar Pradesh & Ors. Vs. Ved Prakash Garg & Ors. It was further noted that this Tribunal considered the matter vide order dated 13.07.2018 in Original Application No. 429/2016 in All India Kalmur People's Front Vs. The State of U.P. & Ors. and in the present matter. Reference has also been made to the order of the High Court dated 04.10.2007 in Writ Petition No. 41578/2007, Ravinder Kumar Singh & Ors. Vs. Additional District Judge, Sonbhadra & Ors. holding that no mining operation was permissible on the land included in the Notification under Section 4 of the Forest Act, 1927.
- 5- This Tribunal, in the order dated 13.07.2018 noticed all the above orders and held that in view of order of the High Court dated 04.10.2007, order dated 14.02.2006 could not be followed.
- 6- The Commissioner, Mirzapur as well as Chief Conservator of Forests, Mirzapur have concluded that orders of the Tribunal dated 13.07.2018 and 25.07.2018 are required to be complied with.

- 7- We are in agreement with the views expressed in the above report and direct that the said report be fully complied with.
- 8- We direct the Commissioner, Mirzapur to furnish further action taken report in the matter on or before 28.02.2019 by e-mail at nqt.filing@gmail.com.
- अतः मा0 एन0जी0टी0 के उक्त आदेश के क्रम में आपके पक्ष में स्वीकृत खनन पट्टा क्षेत्र के अन्तर्गत खनन एवं परिवहन कार्य को अग्रिम आदेश तक के लिये प्रतिबन्धित किया जाता है।

(अमित कुमार सिंह)
जिलाधिकारी,
सोनमद्र।

पत्रांक व तद दिनांक:-
प्रतिलिपि:- निदेशक, भूतत्व एवं खनिकर्म निदेशालय, उ0प्र0 खनिज भवन, लखनऊ को इस आशय से प्रेषित कि प्रश्नगत खननपट्टे में ई0एम0एम0-11 जारी न करने के सम्बन्ध में कृपया आवश्यक कार्यवाही करने का कष्ट करें।

जिलाधिकारी,
सोनमद्र।

25/02/19

समयबद्ध / अत्यन्त महत्वपूर्ण

प्रेषक,

आयुक्त,
विन्ध्याचल मण्डल
मीरजापुर।

सेवा में,

जिलाधिकारी,
सोनभद्र।

संख्या ०४ /आ०लि०/सं०वि०आ०/एनजीटी/2019

दिनांक 22 फरवरी, 2019

विषय:- मा० नेशनल ग्रीन ट्रिब्यूनल, प्रिन्सपल बेंच, नई दिल्ली में योजित मूल प्रार्थना पत्र संख्या 781/2018 में पारित आदेश दिनांक 13.07.2018 व 25.07.2018 के तत्काल अनुपालन के सम्बन्ध में।


महोदय,

कृपया उपर्युक्त विषयक अमित पाण्डेय बनाम उ०प्र० सरकार व अन्य में मा० नेशनल ग्रीन ट्रिब्यूनल, नई दिल्ली द्वारा पारित आदेश दिनांक 04.01.2019 (छायाप्रति संलग्न) का सन्दर्भ ग्रहण करने का कष्ट करें। उक्त निर्णय द्वारा मा० ट्रिब्यूनल के आदेश दिनांक 13.07.2018 तथा 25.07.2018 का पूरी तरह अनुपालन कराने के निर्देश दिये गये हैं। साथ ही दिनांक 28.02.2019 से पूर्व अनुपालन आख्या मा० ट्रिब्यूनल को उपलब्ध कराने के भी निर्देश दिये गये हैं।

अतएव मा० ट्रिब्यूनल के आदेश दिनांक 13.07.2018 व आदेश दिनांक 25.07.2018 का पूरी तरह से अनुपालन सुनिश्चित कराते हुए अनुपालन आख्या दिनांक 25.02.2019 तक अनिवार्य रूप से उपलब्ध कराना सुनिश्चित करें, जिससे मा० ट्रिब्यूनल को समय से अनुपालन आख्या उपलब्ध करायी जा सके।

संलग्नक-उपरोक्तानुसार।

भवदीय


(आनन्द कुमार सिंह)

आयुक्त,

विन्ध्याचल मण्डल, मीरजापुर।


// TRUE COPY //

Item No.04

Court No. 1

**BEFORE THE NATIONAL GREEN TRIBUNAL
PRINCIPAL BENCH, NEW DELHI**

Original Application No.781/2018

Amit Pandey

Applicant(s)

Versus

State of U.P.&Ors.

Respondent(s)

Date of hearing: 25.03.2019

**CORAM: HON'BLE MR. JUSTICE ADARSH KUMAR GOEL, CHAIRPERSON
HON'BLE MR. JUSTICE K. RAMAKRISHNAN, JUDICIAL MEMBER
HON'BLE DR. NAGIN NANDA, EXPERT MEMBER**

For Applicant(s):

For Respondent (s):

ORDER

1. The issue for consideration is illegal mining in the forest land in District Sonebhadra in the State of Uttar Pradesh.
2. The matter has been considered by the Tribunal earlier. Vide order dated 4.1.2019, the Tribunal noticed the earlier proceedings in O.A No. 429/2016 in *All India Kalmur People's Front Vs. The State of U.P & Ors* directing prohibition of leases on the forest land.
3. Since in the present proceedings, it is alleged that mining leases were given to respondent Nos. 5 to 9 i.e., Neel Kant Mining, Sandhuri, Chopan, Sair Ram Enterprises, District Sonebhadra (UP), Gyanendra Tripathi, District Sonebhadra, C.S Infrastructure Limited, District Balia and Amit Enterprises, District Sonebhadra illegally, a report was sought on factual aspects from the Commissioner, Mirzapur. The said report dated 31.12.2018

furnished by the Commissioner, Mirzapur was considered on 4.1.2019 and it is noted that the leases in question have been illegally given on forest land. Accordingly, the Tribunal directed Commissioner, Mirzapur to furnish further action taken report in this regard.

4. Report dated 28.2.2019 has now been received whereby the Commissioner, Mirzapur has referred to the letter of the District Magistrate, Sonbhadra dated 25.2.2019 stating that the order of the Tribunal dated 13.7.2018 has been duly complied with, after adopting due process of law and illegal mining has been prohibited or leases have not been given effect to.

5. In view of the above, no further order is necessary.

The application is disposed of.

Adarsh Kumar Goel, CP

K. Ramakrishnan, JM

Dr. Nagin Nanda, EM

March 25, 2019
Original Application No.781/2018
AK



// TRUE COPY //

ANNEXURE-R-11

IN THE SUPREME COURT OF INDIA

(CIVIL APPELLATE JURISDICTION)

CIVIL APPEAL NO. ~~5257~~/2019

[Against the impugned judgment and final order dated 13.07.2018 passed by the Hon'ble National Green Tribunal, Principal Bench, New Delhi, in Original Application No. 429/2016]

A CIVIL APPEAL UNDER SECTION 22 OF THE NATIONAL GREEN TRIBUNAL ACT, 2010

IN THE MATTER OF:-**POSITION OF PARTIES****Original Application No. 429 of 2016**

	Before NGT	Before this Hon'ble Court
1. Dev Prakash Maurya Prop: M/s Shakti Stone Works, R/o 11/230, Ram Mandir Colony, Obra Sonbhadra, Parsoi, Sonbhadra, U.P-231219	Not a Party	Appellant No. 01
2. Govind Agarwal Prop: M/s Agarwal Stone Works, R/o 19/24, Ram Mandir Colony, Parshoi, Sonbhadra, Uttar Pradesh-231219	Not a Party	Appellant No. 02
3. Bhanu Prakash Prop: M/s Prakash Stones Works, R/o 3/392, Vikram Khand-3, Gomti Nagar, Lucknow, Uttar Pradesh-226010	Not a Party	Appellant No. 03

	VERSUS	
1. All India Kaimur Peoples Front Through its Vice President Bethigaon, P.O. Akshor, District Sonbhadra, U.P.	Applicant	Contesting Respondent No.1
2. State of Uttar Pradesh, through Chief Secretary, Government of U.P., Lucknow-226001, U.P.	Respondent No.1	Contesting Respondent No.2
3. The Principal Secretary, Forest Secretariat, Government of U.P., Lucknow-226001, U.P.	Respondent No.2	Contesting Respondent No.3
4. The Principal Chief Conservator of Forests, Wildlife, Lucknow- 226001, U.P.	Respondent No.3	Contesting Respondent No.4
5. The Additional Principal Chief Conservator of Forests, (Central), Ministry of Environment & Forest, Regional Office (Central Region), Lucknow-226001, U.P.	Respondent No.4	Contesting Respondent No.5
6. The Director, Geology and Mining, Lucknow-226001, U.P.	Respondent No.5	Contesting Respondent No.6
7. The District Magistrate, District Sonbhadra-231207, U.P.	Respondent No.6	Contesting Respondent No.7
8. The District Magistrate, District Mirzapur-231001, U.P.	Respondent No. 7	Contesting Respondent No. 8
9. The Divisional Forest Officer, Kaimur Wildlife Forest Division, Mirzapur-231001, U.P.	Respondent No. 8	Contesting Respondent No. 9

10. The Divisional Forest Officer, Obra Wildlife Forest Division, Obra, Sonbhadra-231219, U.P.	Respondent No. 9	Contesting Respondent No. 10
--	---------------------	------------------------------------

TO

HON'BLE THE CHIEF JUSTICE OF INDIA AND HIS
COMPANION JUDGES OF THE HON'BLE SUPREME COURT OF
INDIA

THE HUMBLE APPEAL OF THE APPELLANTS ABOVE-
NAMED.

MOST RESPECTFULLY SHOWETH:

1. The Appellants are preferring the instant Appeal under Section 22 of the National Green Tribunal Act, 2010 against the impugned judgment and final order dated 13.07.2018 passed by the Hon'ble National Green Tribunal, Principal Bench, New Delhi, in O.A. No. 429/2016, whereby the Hon'ble Tribunal disposed of the Original Application and held that in light of the fact that the leases in District Sonbhadra are on land covered by the Notification under Section 4 of the Forest Act, for which Notification under Section 20 has not yet been issued, the existing leases cannot be held to be valid and the State of Uttar Pradesh, as per order dated 04.05.2016

// TRUE COPY //

ANNEXURE-R-12

IN THE SUPREME COURT OF INDIA

(CIVIL APPELLATE JURISDICTION)

CIVIL APPEAL NO. 5013.. /2019

[Against the impugned judgment and final order dated 25.03.2019 passed by the Hon'ble National Green Tribunal, Principal Bench, New Delhi, in Original Application No. 781/2018]

A CIVIL APPEAL UNDER SECTION 22 OF THE NATIONAL GREEN TRIBUNAL ACT, 2010

IN THE MATTER OF:-**POSITION OF PARTIES****ORIGINAL APPLICATION NO. 781 OF 2018**

		BEFORE NGT	BEFORE THIS COURT
1	Sai Ram Enterprises Through Mr. Chandra Bhushan Gupta 2091, Near Aiyappa Temple, Sector-4, Obra- 231219, District - Sonbhadra (Uttar Pradesh)	Respondent no. 06	Appellant no.01
2	Neel Kanth Mining Through Mr. Suresh Garg (Partner), Main Market, Ward No.8, Sandhuri, Chopan, Uttar Pradesh-231205	Respondent no. 05	Appellant no.02
3	Gyanendra Tripathi	Respondent	Appellant



	Ward No. 21, Ashok Nagar, Robertsganj-231216, District – Sonebhadra (Uttar Pradesh)	no. 07 (16)	no.03
4	C.S. InfraConstruction Limited Through Mr. Pushpa Singh Village & Post : Khanwar, District – Balia – 221711 (Uttar Pradesh)	Respondent no. 08	Appellant no.04
5	Amit Enterprises/108353 Through Mr. Amit Mittal 61, Bari Dala, Dala- 231207, District – Sonebhadra (Uttar Pradesh)	Respondent no. 09	Appellant no.05
		VERSUS	
1	Amit Pandey Presently Posted as President Sonbhadra Van Evam Paryavaran Sanrakshan Samiti Situating at Uttar Mohal, Robertsganj, District-Sonbhadra- 231216.	Applicant	Respondent no.01
2	State of U.P. Through Additional Chief Secretary	Respondent no. 01	Respondent no.02

	Bhutatva Evam Khanikarm Vibhag, Government of Uttar Pradesh., Lucknow -228001	17	
3	District Magistrate, Sonbhadra, Uttar Pradesh231219	Respondent no. 02	Respondent no.03
4	Mines Officer, Obra, District-Sonbhadra Uttar Pradesh-231219.	Respondent no. 03	Respondent no.04
5	Forest Settlement Officer, Renukoot, Sonbhadra, Uttar Pradesh.-231217,	Respondent no. 04	Respondent no.05

TO

HON'BLE THE CHIEF JUSTICE OF INDIA AND HIS
COMPANION JUDGES OF THE HON'BLE SUPREME COURT
OF INDIA

THE HUMBLE APPEAL OF THE APPELLANTS ABOVE-
NAMED.

MOST RESPECTFULLY SHOWETH:

1. The Appellants are preferring the instant Appeal under Section 22 of the National Green Tribunal Act, 2010 against the impugned judgment and final

order dated 25.03.2019 passed by the Hon'ble National Green Tribunal, Principal Bench, New Delhi, in O.A. No. 781/2018, whereby the Hon'ble Tribunal disposed of the Original Application and accepted the report submitted by the Commissioner, Mirzapur, wherein it had been stated that the mining leases granted in favor of the Appellants by the State of Uttar Pradesh shall not be given effect to, in light of the orders passed by the Hon'ble Tribunal.

2. The Appellants have not filed any other Civil Appeal against the impugned judgment and final order dated 25.03.2019 passed by the Hon'ble National Green Tribunal, Principal Bench, New Delhi, in O.A. No. 781/2018.

3. FACTS:

- i. Notification No. 6865/14-2-4(11)-70 was issued by the State Government of Uttar Pradesh, under Section 4 of the Indian Forest Act, 1927, indicating the decision of the State Government to constitute the land mentioned in the Notification as reserved forest. The Notification included large tracts of land in Village Billi Markundi, Tehsil Robertsganj, District Mirzapur, including the land over which mining leases have been given to the

Appellants, contained in Khasra No. 7536 Ga (old Khasra No. 3567) and Khasra No. 5593 Ka (old Khasra Nos. 2805, 2852, 2978 and 2989). Khasra No. 7536, carved out of several small Khasras, is spread over a total area of 106.4720 hectares, out of which Khasra No. 7536 Ga (carved out of old Khasra No. 3567) comprises of 42.9110 hectares, and is recorded as 'pahad' in the revenue records. Khasra No. 5593, also carved out of several small Khasras, measures a total of 64.3330 hectares, out of which Khasra No. 5593 Ka (carved out of old Khasra Nos. 2805, 2852, 2978 and 2989) comprises of 43.2160 hectares, and is recorded as 'pahad' in the revenue records. Several other Notifications under Section 4 of the Indian Forest Act were issued by the State Government from time to time declaring the intention to constitute reserved forest in respect of about 7.89 lakh acres falling in Tehsils Dudhi and Robertsganj in District Mirzapur.

A true translated copy of Notification No. 6865/14-2-4(11)-70 dated 05.11.1969 issued by the State Government of Uttar Pradesh under Section 4 of the Indian Forest Act, 1927 is

annexed and marked as ANNEXURE A-01(PG. NO 58 TO 61)).

- ii. The various Notifications issued by the State Government of Uttar Pradesh under Section 4 of the Indian Forest Act became the subject matter of lis before this Hon'ble Court after a letter was received from Banwasi Seva Ashram operating in District Mirzapur, highlighting the plight of the Adivasis living within Dudhi and Robertsganj Tehsils in District Mirzapur. On the basis of the letter, a Writ Petition under Article 32 of the Constitution of India was registered as Writ Petition (Criminal) No. 1061 of 1982, titled as Banwasi Seva Ashram vs State of U.P. &Ors., before this Hon'ble Court.
- iii. While the Notification dated 01.05.1970, issued under Section 4 of the Indian Forest Act in respect of Village Markundi, was prevailing, a Notification dated 10.08.1982 was issued and 495.3 hectares, out of the total area of 1680.40 hectares covered under the Notification dated 01.05.1970, was declared as being included in Kaimur Wildlife Sanctuary under Section 18(1) of the Wildlife Protection Act, 1972.

- iv. This Hon'ble Court passed judgment dated 20.11.1986 in Writ Petition (Crl) No. 1061 of 1982 [(1986) 4 SCC 753]. This Hon'ble Court specifically observed that admittedly there had been no survey and settlement in the Tehsils of Dudhi and Robertsganj before issuance of the Notifications under Section 4 of the Indian Forest Act, 1927. This Hon'ble Court, after hearing all the parties, passed several directions which are enumerated in the List of Dates above. A true typed copy of judgment dated 20.11.1986 passed in Writ Petition (Crl) No. 1061 of 1982 [(1986) 4 SCC 753] is annexed and marked as annexure **ANNEXURE A-02(PG. NO 62 TO 75)**.
- v. Mining Leases were granted to several people, including the predecessors of the Appellants, over land comprised in Khasra No. 7536 Ga (carved out of Old Khasra No. 3567) and Khasra No. 5593 Ka (carved out of Old Khasra Nos. 2805, 2852, 2978 and 2989), by the District Magistrate, Sonbhadra, in Village Billi Markundi, Tehsil Robertsganj, District Sonbhadra. In compliance of order dated 20.11.1986 passed by this Hon'ble Court, predecessors of the Appellants filed their claims before the Forest Settlement Officer and prayed

for exclusion of the land contained in Khasra Nos. 7536 Ga and 5593 Ka, over which mining leases had been given to them, from the purview of Notification issued under Section 4 of the Indian Forest Act.

- vi. Sonbhadra District was carved out from District Mirzapur in 1989 and Tehsils Dudhi and Robertsganj were included in the said district.
- vii. By orders passed in various claims preferred by different claimants, the Forest Settlement Officer allowed the claims and directed the land contained in Khasra Nos. 7536 Ga and 5593 Ka to be excluded from the purview of the Notification issued under Section 4 of the Forest Act. The Forest Settlement Officer specifically observed that mining in the said area has been going on since a very long time and the land is recorded as 'pahad' in the revenue records. As per definition, revenue entry 'Pahad' in respect of a land stands for uncultivable waste land which belongs to the revenue department and can hence be leased out for mining by the State.

A true translated copy of order of Forest Settlement Officer dated 29.07.1993, in respect of

one of the claimants, is annexed and marked as annexure **ANNEXURE A-03 (PG. NO 76 TO 80)**.

- viii. As per the judgment of this Hon'ble Court in Writ Petition (Crl.) 1061 of 1982, the finding of the Forest Settlement Officer in the claims filed by the predecessors of the Appellants, along with the requisite papers, were placed before the Additional District Judge, Odra to be heard as Appeals under the Indian Forest Act.
- ix. This Hon'ble Court passed order dated 18.07.1994 in W.P. (Crl.) No. 1061 of 1982, wherein this Hon'ble Court observed that the settlement proceedings pursuant to the order dated 20.11.1986 passed by this Hon'ble Court are nearly complete. This Hon'ble Court further directed that the sole Additional District Judge, out of the five Additional District Judges appointed as Appellate Authorities by this Hon'ble Court, shall function till September 30, 1994 by which date he shall conclude the hearing of all the appeals and review petitions. A true typed copy of order dated 18.07.1994 passed by this Hon'ble Court in W.P. (Crl.) No. 1061 of 1982 is annexed and marked as **ANNEXURE A-04(PG. NO 81 TO 83)**.

- x. The findings and decision of Forest Settlement Officer, in claims filed by the predecessors of the Appellants, in respect of Khasra No. 5593 Ka, were upheld by the Additional District Judge, Obra and the Appeals were disposed of by judgment dated 23.07.1994.

A true translated copy of the judgment dated 23.07.1994 passed by the Additional District Judge, Obra, in respect of Khasra No. 5593 Ka, is annexed and marked as **ANNEXURE A-05(PG. NO 84 TO 92)**.

- xi. The findings and decision of Forest Settlement Officer in claims filed by the predecessors of the Appellants were upheld by the Additional District Judge, Obra and the Appeals were disposed of by judgment dated 30.09.1994. On the basis of the survey and record operation conducted by the Forest Officers and the settlement proceedings concluded by the Forest Settlement Officers and the Appellate Authorities (Additional District Judges), in pursuance of the orders passed by this Hon'ble Court in W.P. (Crl.) No. 1061 of 1982, Khasra No. 7536 Ga, comprising of 42.9110 hectares, was carved out of old Khasra No. 3567, and was earmarked as 'pahad' (revenue land).

Similarly, Khasra No. 5593 Ka, comprising of 43.2160 hectares, was carved out of old Khasra Nos. 2805, 2852, 2978 and 2989, and was earmarked as 'pahad' (revenue land).

A true translated copy of the judgment dated 30.09.1994 passed by the Additional District Judge, Obra, in respect of Khasra No. 7536Ga, is annexed and marked as ANNEXURE A-06(PG. NO 93 TO 154).

- xii. The Forest Department, State of Uttar Pradesh filed Review Petitions, in respect of each claimant, against the common order dated 30.09.1994 passed by the Additional District Judge, Obra. The State Government, despite having made a statement and given an undertaking before this Hon'ble Court on 20.11.1986 that they shall honor the decision of the Additional District Judge and implement the same, sought to re-open the settlement proceedings, which already stood concluded, in a blatant attempt to abuse the process of law and in utter disregard to the order passed by this Hon'ble Court. It is relevant to point out that no Review Petition was filed against the order dated 23.07.1994.

xiii. The Review Petitions were allowed by the Additional District Judge by common judgment dated 31.05.2003 on the basis of a complete misinterpretation of the judgment dated 20.11.1986 passed by this Hon'ble Court in W.P. (Crl.) No. 1161 of 1982 titled Banwasi Seva Ashram vs State of U.P. &Ors. The Additional District Judge gravely erred and reached the conclusion that the claimants were not entitled to file a claim before the Forest Settlement Officer in terms of the judgment passed by this Hon'ble Court as they were not landowners and were only leaseholders, despite the fact that this Hon'ble Court in the said judgment had clearly indicated that all claims will be entertained by the Forest Settlement Officer and will be decided by the Forest Settlement Officer and the Appellate Authority in accordance with the directions issued by this Hon'ble Court in the said judgment, which directions were followed to the letter in the case of the claimants and the claims were decided by the Forest Settlement Officer and the Appellate Authority through cogent and well-reasoned orders.

A true translated copy of the common judgment dated 31.05.2003 passed by Additional District Judge in the Review Petitions is annexed and marked as ANNEXURE A-07(PG.NO. 155 TO 186).

- xiv. The predecessors of the Appellants, being aggrieved by the order dated 31.05.2003 passed by the Additional District Judge in the Review Petitions, filed Civil Miscellaneous Writ Petition No. 29546 of 2003 titled Ved Prakash Garg & Ors vs Additional District Judge, Anpara before the Hon'ble High Court of Judicature at Allahabad.
- xv. The State Government filed a counter affidavit before the Hon'ble High Court in the Writ Petition, in which it was clearly admitted that the land in question belonged to the revenue department and mining operation could be permitted on the said area. The State Government also admitted that the Additional District Judge did not have the power to review. A true typed copy of counter affidavit dated 14.02.2006 filed on behalf of the State of Uttar Pradesh in Civil Miscellaneous Writ Petition No. 29546 of 2003, before the Hon'ble High Court of Judicature at Allahabad, is annexed

and marked as ANNEXURE A-8

(PG.NO. 187 TO 190).

xvi. The Hon'ble High Court passed an order dated 14.02.2006 in Writ Petition No. 29546 of 2003 titled Ved Prakash Garg &Ors vs Additional District Judge, Anpara, and allowed the said Writ Petition and set aside the common order dated 31.05.2003 passed by the Additional District Judge. The Hon'ble High Court recorded that the State Government has itself admitted that the land in question belonged to the revenue department and mining operation should be permitted over the said area. The Hon'ble High Court also held that the Additional District Judge did not have the power to review, in light of the order dated 18.07.1994 passed by this Hon'ble Court, and the said view was also supported by the Advocate General in his written opinion. Thus, in light of the admission on the part of the State Government and the opinion of the Advocate General, it became abundantly clear that the land, over which mining leases have been granted to the Appellants, belongs to the revenue department and mining leases could be given on the same.

A true typed copy of order dated 14.02.2006 passed in Civil Miscellaneous Writ Petition No. 29546 of 2003 titled Ved Prakash Gaur & Ors vs Additional District Judge, Anpara is annexed and marked as **ANNEXURE A-9(PG.NO.191 TO 197)**.

xvii. The Hon'ble High Court of Judicature at Allahabad passed judgment dated 04.10.2007 in Writ Petition (C) No. 41578/2007 titled Ravinder Kumar Singh & Ors vs Additional District Judge, Sonbhadra & Ors, in which a Division Bench of the Hon'ble High Court had held that the order dated 14.02.2006 was not good precedent and will not be applicable to other cases. The Hon'ble High Court, in its order dated 04.10.2007, also specifically observed that the order dated 14.02.2006 would be enforceable inter-se the parties to that Writ Petition.

A true typed copy of judgment dated 04.10.2007 passed in Civil Miscellaneous Writ Petition No. 41578/2007 titled Ravinder Kumar Singh & Ors vs Additional District Judge, Sonbhadra & Ors is annexed and marked as **ANNEXURE A-10(PG.NO.198 TO 22))**.

xviii. The Hon'ble National Green Tribunal passed a detailed judgment dated 04.05.2016 in

Miscellaneous Application Nos. 1166 of 2015 and 1164 of 2015 titled T.N. Godavarman Thirumalpad vs Union of India &Ors and issued several directions, which have been enumerated in the List of Dates above. A true typed copy of judgement and order dated 04.05.2016 passed by the Hon'ble National Green Tribunal in Miscellaneous Application Nos. 1166 of 2015 and 1164 of 2015 titled T.N. Godavarman Thirumalpad vs Union of India &Ors is annexed and marked as **ANNEXURE A-11(PG.NO.233 TO 383)**.

xix. An organization named All India Kaimur People's Front preferred Original Application No. 429 of 2016 titled All India Kaimur People's Front vs State of Uttar Pradesh and Ors. before the Hon'ble National Green Tribunal praying that immediate ban/prohibition upon continued illegal mining and projects within 1 km from Kaimur Wildlife Sanctuary situated in Villages Billi Markindi, Vardiya, Sinduriya, Agorikhas, Kota, Redia, Gurdah, Sasnai, Kargara, Mitapur, Badagaon and Patbadh in Distict Sonbhadra and cancellation of all mining leases within 10 kms of the periphery of Kaimur Wildlife Division, situated in District Mirzapur and Kaimur Wildlife Sanctuary,

Sonbhadra. Notice was issued by the Hon'ble National Green Tribunal in the Original Application on 12.08.2016.

xx. Notification dated 20.03.2017 was issued by the Ministry of Environment, Forest and Climate Change under Section 3(3)(2) of the Environment (Protection) Act, 1986 declaring the area to an extent of 1 km all around the boundary of Kaimur Wildlife Sanctuary in the State of Uttar Pradesh as the Kaimur Wildlife Sanctuary Eco-Sensitive Zone. A true translated copy of Notification dated 20.03.2017 issued by Ministry of Environment, Forest and Climate Change, Government of India, is annexed and marked as **ANNEXURE A-12(PG.NO.384 TO 416)**.

xxi. The State Government, after an inordinate delay of nearly 12 years, filed Special Appeal Defective No. 63 of 2018, titled as State of U.P. &Ors vs Ved Prakash Garg &Ors, against order dated 14.02.2006 passed by the Learned Single Judge in Civil Miscellaneous Writ Petition No. 29546 of 2003, in spite of the fact that the said order was passed taking into account the clear admission on the part of the State Government.

xxii. Special Appeal Defective No. 63 of 2018 was dismissed by the Division Bench of the Hon'ble High Court by order dated 02.02.2018 on the ground of delay and laches and as being hopelessly barred by time.

A true typed copy of order dated 02.02.2018 passed by the Hon'ble High Court of Judicature at Allahabad in Special Appeal Defective No. 63 of 2018 is annexed and marked as **ANNEXURE A-13(PG.NO. 417 TO —)**.

xxiii. The Regional Forest Officer, Obra Forest Division, Sonbhadra, issued No Objection Certificates (NOC) dated 28.04.2018 for undertaking mining activity over the parcels of land contained in Khasra No. 5593 Ka, in respect of which mining leases have been issued to Appellant Nos. 4 and 5 [measuring 4.23 hectares and 4.00 hectares respectively].

A true translated copy of No Objection Certificate dated 28.04.2018, issued by the Regional Forest Officer, Obra Forest Division, Sonbhadra, in respect of the land, on which mining lease has been granted to Appellant No. 4, comprised in Khasra No. 5593Ka, is annexed and marked as **ANNEXURE A-14(PG.NO. 418 TO 425)**.

xxiv. The Regional Forest Officer, Obra Forest Division, Sonbhadra, issued No Objection Certificates (NOC) dated 04.05.2018 for undertaking mining activity over the parcels of land contained in Khasra No. 7536 Ga, in respect of which mining leases have been issued to Appellant Nos. 1, 2 and 3 [measuring 4.97 hectares, 4.00 hectares, 4.00 hectares and 4.00 hectares respectively].

A true translated copy of No Objection Certificate dated 04.05.2018, issued by the Regional Forest Officer, Obra Forest Division, Sonbhadra, in respect of the land comprised in Khasra No. 7536 Ga, on which mining leases have been granted to Appellant No. 1, is annexed and marked as **ANNEXURE A-15(PG.NO. 426 TO 433)**.

xxv. The Hon'ble National Green Tribunal, by judgment and order dated 13.07.2018, disposed of the Original Application and held that in light of the fact that the leases in District Sonbhadra are on land covered by the Notification under Section 4 of the Forest Act, for which Notification under Section 20 has not yet been issued, the existing leases cannot be held to be valid and the State of Uttar Pradesh, as per order dated 04.05.2016 of

the Tribunal, prohibit forthwith all the leases in the said area.

A true typed copy of the judgment dated 13.07.2018, passed by the Hon'ble Tribunal in O.A. No. 429/2016 titled All India Kaimur People's Front vs State of U.P. &Ors, is annexed and marked as **ANNEXURE A-16(PG.NO. 434 TO 444)**.

xxvi. The Hon'ble Tribunal completely lost sight of the fact that the land of some of the leaseholders, who are similarly situated as the Appellants in the instant case, were excluded from the purview of Section 4 Notification under the settlement proceedings, concluded in terms of the orders passed by this Hon'ble Court in W.P. (Crl.) No. 1061 of 1982, and erroneously held that the leases in question are on land covered by the Notification under Section 4 of the Forest Act.

xxvii. The Hon'ble Tribunal also gravely erred in failing to notice that the common order dated 31.05.2003 passed by the Additional District Judge in the Review Petitions was set aside by the Hon'ble High Court by order dated 14.02.2006. The State filed an Appeal against the order dated 14.02.2006, after an inordinate delay of around 12 years, and

the same was dismissed by order dated 02.02.2018. Hence, the land belonging to the leaseholders stood excluded from the Notification under Section 4 of the Forest Act and the nature of the land being revenue land, before the issuance of the Notification under Section 4, then in terms of the judgment dated 04.05.2016 passed by the Hon'ble National Green Tribunal, the provisions of Forest Conservation Act shall not be applicable to such land and mining leases on the same can be issued by the State Government, making the existing leases issued in favor of the leaseholders valid.

xxviii. The Hon'ble Tribunal further gravely erred in misinterpreting the judgment dated 04.05.2016 passed by the Hon'ble Tribunal in M.A. No. 1166 of 2015 titled T.N. Godavarman vs UOI &Ors. and holding it to be applicable to the mining leases of leaseholders similarly situated as the Appellants.

xxix. The Hon'ble Tribunal, in its judgment dated 04.05.2016, had clearly held that the mining leases on the areas, notified under Section 4 of the Forest Act, for which settlement rights have been finalized pursuant to the judgment in Banvasi Seva Ashram case dated 20.11.1986,

shall be cancelled by the State of Uttar Pradesh. Thus, the judgment of the Hon'ble Tribunal is only applicable to leases which were given over lands notified as reserved forest under the Notification under Section 4 and which continued to be so after the settlement of rights in terms of judgment in Banvasi Seva Ashram case. It was not applicable to leases where the land was excluded in the settlement of rights itself on the ground that it was not forest land, as is the situation with the Appellants in the instant case. The judgment dated 04.05.2016 confirms the finality of the settlement proceedings, held and concluded in terms of the judgment of this Hon'ble Court, and does not sit in appeal over them, as it is incapable of doing in any case.

xxx. The direction of the Hon'ble Tribunal in the judgment dated 04.05.2016 is in the context of cases where the land, after the conclusion of the settlement proceedings in 1994, was confirmed and categorized as forest land, but was later sought to be excluded through re-opening of the settlement proceedings, as was done in the case of M/s JAL. It is not applicable to cases where the land was excluded in the original settlement

proceedings itself, as was done in the case of the land over which mining leases have been granted to the Appellants. Hence, the Hon'ble Tribunal has committed a manifest error in law and fact in its judgment dated 13.07.2018 and reached a patently wrong conclusion in directing the State of Uttar Pradesh to cancel the validly issued mining leases to the leaseholders.

xxxi. Plots of land measuring 4.97 hectares, 4.00 hectares, 4.00 hectares and 4.00 hectares respectively (total 16.97 hectares) were carved out of Khasra No. 7536 Ga and Letters of Intent dated 20.08.2018 for issuance of mining leases [after e-auction] were granted in favor of Appellant No. 1 [2 leases], Appellant No. 2 and Appellant No. 3 respectively over the said parcels of land. Similarly, plots of land measuring 4.230 hectares and 4.00 hectares respectively (total 8.230 hectares) were carved out of Khasra No. 5593 Ka and Letters of Intent dated 20.08.2018 for issuance of mining leases were granted in favor of Appellant No. 4 and Appellant No. 5 over the said parcels of land. As has been pointed out earlier, both Khasra No. 7536 Ga and Khasra No. 5593 Ka comprise of land which were excluded from the

purview of the Notification issued under Section 4 of the Forest Act by way of the settlement proceedings held in terms of the directions issued by this Hon'ble Court in the Banvasi Sewa Ashram case and are recorded as 'pahad' in the revenue records, which was the character of the land comprised in the said Khasras even before the issuance of the Notification under Section 4 of the Forest Act.

Letters of Intent dated 20.08.2018 for issuance of mining lease, granted in favor of Appellant No. 1, is annexed and marked as **ANNEXURE A-17(PG.NO. 445 TO 457).**

Letter of Intent dated 20.08.2018 for issuance of mining lease, granted in favor of Appellant No. 2, is annexed and marked as **ANNEXURE A-18(PG.NO. 458 TO 463).**

Letter of Intent dated 20.08.2018 for issuance of mining lease, granted in favor of Appellant No. 3, is annexed and marked as **ANNEXURE A-19(PG.NO. 464 TO 470).**

Letter of Intent dated 20.08.2018 for issuance of mining lease, granted in favor of Appellant No. 4, is annexed and marked as **ANNEXURE A-20(PG.NO. 471 TO 476).**

Letter of Intent dated 20.08.2018 for issuance of mining lease, granted in favor of Appellant No. 5, is annexed and marked as **ANNEXURE A-21(PG.NO. 477 TO 483).**

xxxii. Environmental Clearances were issued in favor of Appellant No. 1 [2 Mining Leases, one in respect of 4.97 hectares and the other in respect of 4.00 hectares], Appellant No. 2 [4.00 hectares and Appellant No. 3 [4.00 hectares] on 23.10.2018 by the District Level Environment Impact Assessment Authority, Sonbhadra for undertaking mining activity over the respective parcels of land, in respect of which mining leases had been granted to them, situated in Village Billi Markundi, Tehsil Robertsganj, District Sonbhadra.

A true typed copy of Environmental Clearance dated 23.10.2018, issued in favor of Appellant No. 1, in respect of an area of 4.97 hectares, is annexed and marked as **ANNEXURE A-22 (PG.NO. 484 TO 492).**

A true typed copy of Environmental Clearance dated 23.10.2018, issued in favor of Appellant No. 1, in respect of an area of 4.00 hectares, is

annexed and marked as ANNEXURE A-23
(PG.NO. 493 TO 501).

A true typed copy of Environmental Clearance dated 23.10.2018, issued in favor of Appellant No. 2, in respect of an area of 4.00 hectares, is annexed and marked as ANNEXURE A-24
(PG.NO. 502 TO 510).

A true typed copy of Environmental Clearance dated 23.10.2018, issued in favor of Appellant No. 4 in respect of an area of 4.00 hectares, is annexed and marked as ANNEXURE A-25
(PG.NO. 511 TO 519).

xxxiii.O.A. No. 781/2018 was filed before the Hon'ble Tribunal praying for closure of the mining leases operating in favor of the Appellants in District Sonbhadra, State of Uttar Pradesh, on the ground that the same were operating on land covered by the Notification issued under Section 4 of the Indian Forest Act, 1927 and in light of the judgment dated 13.07.2018 passed by the Hon'ble Tribunal in O.A. No. 429/2016 titled All India Kaimur Peoples' Front vs State of U.P. &Ors, the mining leases could not be allowed to operate. The Original Application came up for hearing for the first time before the Hon'ble Tribunal on 25.10.2018, when the Hon'ble Tribunal, without

issuing notice to the Appellants, who had been impleaded as Respondents in the Original Application, directed the concerned authorities to take appropriate steps in the matter.

xxxiv. Civil Appeal No. 11368 of 2018 titled Qaiser Shikoh vs All India Kaimur People's Front & Ors, arising out of the relied upon judgment dated 13.07.2018 passed by the Hon'ble National Green Tribunal in O.A. No. 429/2016 titled All India Kaimur Peoples' Front vs State of U.P. & Ors, was listed before this Hon'ble Court on 22.11.2018, when this Hon'ble Court was pleased to issue notice in the matter.

A true typed copy of order dated 22.11.2018 passed by this Hon'ble Court in Civil Appeal No. 11368 of 2018 titled Qaiser Shikoh vs All India Kaimur People's Front & Ors is annexed and marked as ANNEXURE A-26(PG.NO. 520 TO 521).

xxxv. Special Leave Petition (C) Diary No. 33675/2018 titled State of U.P. & Ors vs Ved Prakash Garg & Ors, filed by the State of Uttar Pradesh against order dated 02.02.2018 passed by the Hon'ble High Court in Special Appeal Defective No. 63 of 2018 was dismissed by this Hon'ble Court by order dated 22.11.2018. Hence, the question of

exclusion of the land, over which mining leases have been granted to the Appellants, from the Notification under Section 4 of the Forest Act, attained finality.

A true typed copy of order dated 22.11.2018 passed by this Hon'ble Court in Special Leave Petition (C) Diary No. 33675/2018 titled State of U.P. &Ors vs Ved Prakash Garg &Ors is annexed and marked as **ANNEXURE A-27(PG.NO. 522 TO —)**.

xxxvi. A detailed Report was submitted to the Hon'ble Tribunal by the Commissioner, Mirzapur in respect of the mining leases of the Appellants, on 31.12.2018. All the relevant facts were set out in the Report and it was specifically stated that the land, over which mining leases have been granted to the Appellants, was excluded from the purview of the Notification issued under Section 4 of the Forest Act under the settlement proceedings concluded in terms of the judgment passed by this Hon'ble Court in the Banvasi Sewa Ashram case and the concerned land fell in the category of 'pahad'. It was further categorically stated that the orders dated 14.02.2006, 04.10.2007, 02.02.2018 and 22.11.2018 have not been brought to the attention of the Hon'ble Tribunal because of which

the implications of the said orders have not been considered.

A true translated copy of the Report dated 31.12.2018 submitted by the Commissioner, Mirzapur, before the Hon'ble National Green Tribunal, is annexed and marked as **ANNEXURE A-28(PG.NO.523 TO 558)**.

xxxvii. The Hon'ble Tribunal passed order in relation to the Report dated 31.12.2018 submitted by the Commissioner, Mirzapur but completely losing sight of the contents of the report, erroneously held that all the relevant orders, including the orders dated 14.02.2006 and 04.10.2007, were noticed by the Hon'ble Tribunal at the time of passing of the judgment dated 13.07.2018 and it had been held by the judgment dated 13.07.2018 that in view of order dated 04.10.2007, the order dated 14.02.2006 passed by the Hon'ble High Court could not be followed. The fact of the matter is that neither the order dated 14.02.2006 nor the order dated 04.10.2007 have either been mentioned or discussed or deliberated upon in the judgment dated 13.07.2018 passed by the Hon'ble Tribunal. Further, the Hon'ble Tribunal failed to appreciate that the order dated 14.02.2006 would

be enforceable inter-se the parties to that Writ Petition and even if it is assumed that the order dated 14.02.2006 would not be applicable in other cases, it would still continue to bind the parties in Writ Petition (C) No. 29546/2003 (54 Petitioners in all) since the same has already been confirmed by this Hon'ble Court by order dated 22.11.2018 and has attained finality. The Hon'ble Tribunal, without considering the above-mentioned relevant aspects, held that the orders dated 13.07.2018 and 25.10.2018 passed by the Hon'ble Tribunal were required to be complied with and directed the Commissioner, Mirzapur to furnish an Action Taken Report in the case.

A true typed copy of order dated 04.01.2019 passed by the Hon'ble National Green Tribunal in O.A. No. 781/2018 titled Amit Pandey vs State of U.P. & Ors is annexed and marked as **ANNEXURE A-29(PG.NO. 559 TO 561)**.

xxxviii. In compliance of the order dated 04.01.2019 passed by the Hon'ble Tribunal, the District Magistrate, Sonbhadra cancelled the mining lease, in respect of Appellant No. 2, by order dated 05.02.2019, and an Action Taken Report was submitted before the Hon'ble Tribunal.

A true translated copy of order dated 05.02.2019 issued by the District Magistrate, Sonbhadra, in respect of Appellant No. 2, is annexed and marked as **ANNEXURE A-30(PG.NO.562 TO565)**.

xxxix. District Magistrate, Sonebhadra furnished a compliance report dated 25.02.2019 pursuant to order dated 13.07.2018 passed by the Hon'ble Tribunal. to Division Commissioner, Mirzapur, Uttar Pradesh. A true typed copy of report dated 25.02.2019 of District Magistrate, Sonebhadra is marked and annexed as **ANNEXURE A-31. (PG.566 TO 578)**

xl. After relying on the report dated 25.02.2019 forwarded by District Magistrate Sonebhadra, the Commissioner Mirzapur has submitted its report dated 28.02.2019 in compliance of order dated 13.07.2018 passed by the Hon'ble Tribunal. A true typed copy of report dated 28.02.2019 of Commissioner, Mirzapur is marked and annexed as **ANNEXURE A-32(PG. NO.579 TO 590)**.

xli. The Hon'ble Tribunal disposed of the Original Application and accepted the report submitted by the Commissioner, Mirzapur, wherein it had been stated that the mining leases granted in favor of the Appellants by the State of Uttar Pradesh shall not be given effect to, in light of the orders passed by the Hon'ble Tribunal. It is relevant to point out that the Hon'ble National Green Tribunal failed to consider that its direction of cancellation/not giving effect to the mining leases will have significant bearing

on the Appellants, to whom even notice was never issued by the Hon'ble Tribunal, in spite of the fact that the Appellants had been impleaded as Respondents in the Original Application. The Appellants had no occasion to address the Hon'ble Tribunal in respect of the facts and sequence of events as they have taken place in the case. The failure on the part of the Hon'ble Tribunal to issue notice to the Appellants has resulted in their leases being unfairly and wrongly cancelled/not given effect to without them ever being heard or being allowed to place their defense, which is in gross violation of the principles of natural justice and the universally accepted rule of 'Audi Alteram Partem'

4. **QUESTIONS OF LAW:-**

The following questions of law are being raised in the instant Appeal for the kind consideration of this Hon'ble Court:

- A. **WHETHER** the Hon'ble Tribunal, while passing the impugned judgment, completely lost sight of the fact that the land on which mining leases have been issued to the Appellants, were excluded from the purview of Section 4 Notification under the settlement proceedings, concluded in terms of the judgment passed by this Hon'ble Court in Banvasi Seva Ashram case, on the ground that the said lands were recorded as 'pahad' (uncultivable waste land belonging to the revenue department) at the time of issuance of the Notification under Section 4 and were not forest land, and

erroneously held that the leases in question are on land covered by the Notification under Section 4 of the Indian Forest Act, 1927?

- B. **WHETHER** the Hon'ble Tribunal failed to appreciate that after the conclusion of the settlement proceedings, the land on which the mining leases have been granted to the Appellants stood excluded from the Notification under Section 4 of the Forest Act and the nature of the land being revenue land before the issuance of the Notification under Section 4, then in terms of the judgment dated 04.05.2016, passed by the Hon'ble National Green Tribunal in M.A. No. 1166 of 2015 titled T.N. Godavarman Thirumalpad vs Union of India &Ors, the provisions of Forest Conservation Act shall not be applicable to such land and mining leases on the same can be given by the State Government, making the existing leases issued in favor of the Appellants valid?
- C. **WHETHER** the Hon'ble National Green Tribunal failed to consider that no notices were issued by the Hon'ble Tribunal to the Appellants, which has resulted in their leases being unfairly and wrongly cancelled without them ever being heard or being allowed to place their defense, which is in gross violation of the principles of natural justice and the universally accepted rule of 'Audi Alteram Partem'?

- D. **WHETHER** the Hon'ble Tribunal failed to take into account that it has been settled by this Hon'ble Court in a catena of judgments that no one should be condemned without being heard and that all parties must be given an opportunity of being heard. Passing an order prejudicial to any person, without affording him a reasonable opportunity of being heard, is violative of the principles of natural justice, which is a crucial tenet of civilized justice system?
- E. **WHETHER** the Hon'ble Tribunal failed to consider that it has been held by this Hon'ble Court in *Maneka Gandhi vs Union of India* [1978 AIR SC 597] that Article 14 is an authority for the proposition that the principles of natural justice are an integral part of the guarantee of equality assured by Article 14 and an order depriving a person of his civil right, passed without affording him an opportunity of being heard, suffers from the vice of violation of natural justice?
- F. **WHETHER** the Hon'ble Tribunal gravely erred in not taking into account that principles of natural justice are great humanizing principles intended to invest law with fairness and to secure justice and that it is clearly established that a man

cannot incur the loss of liberty or property for an offence by a judicial proceeding until he has had a fair opportunity of answering the case against him?

- H. **WHETHER** the Hon'ble Tribunal further gravely erred in relying upon the erroneous judgment dated 13.07.2018 passed by the Hon'ble Tribunal in O.A. No. 429/2016, which is based on a clear misinterpretation of the judgment dated 04.05.2016 passed by the Hon'ble Tribunal in M.A. No. 1166 of 2015 and is under challenge before this Hon'ble Court?
- I. **WHETHER** the Hon'ble Tribunal erred in holding in its order dated 04.01.2019, passed in O.A. No. 781/2018, that all the relevant orders, including the orders dated 04.10.2007 and 14.02.2006, were noticed by the Hon'ble Tribunal at the time of passing of the judgment dated 13.07.2018 and it had been held by the judgment dated 13.07.2018 that in view of order dated 04.10.2007, the order dated 14.02.2006 passed by the Hon'ble High Court could not be followed. The fact of the matter is that neither the order dated 14.02.2006 nor the order dated 04.10.2007 have either been mentioned or discussed or deliberated

upon in the judgment dated 13.07.2018 passed by the Hon'ble Tribunal?

- J. **WHETHER** the Hon'ble Tribunal gravely erred in reaching the conclusion in its order dated 04.01.2019 passed in O.A. No. 781/2018 that the order dated 14.02.2006 passed by the Hon'ble High Court could not be followed in light of the order dated 04.10.2007 passed by the Hon'ble High Court in Writ Petition (C) No. 41578/2007 titled Ravinder Kumar Singh & Ors vs Additional District Judge, Sonbhadra & Ors, in which a Division Bench of the Hon'ble High Court had held that the order dated 14.02.2006 was not good precedent and will not be applicable to other cases.

5. **GROUND**

The Appeal is filed before this Hon'ble Court on the following among other grounds:-

- A. **BECAUSE** the Hon'ble Tribunal, while passing the impugned judgment, completely lost sight of the fact that the land on which the mining leases have been granted to the Appellants, were excluded from the purview of Section 4 Notification under the settlement proceedings,

concluded in terms of the judgment passed by this Hon'ble Court in Banvasi Seva Ashram case, on the ground that the said lands were recorded as 'pahad' (uncultivable waste land belonging to the revenue department) at the time of issuance of the Notification under Section 4 and were not forest land, and erroneously held that the leases in question are on land covered by the Notification under Section 4 of the Indian Forest Act, 1927.

- B. **BECAUSE** the Hon'ble Tribunal failed to appreciate that after the conclusion of the settlement proceedings, the land on which the mining leases have been granted to the Appellants stood excluded from the Notification under Section 4 of the Forest Act and the nature of the land being revenue land before the issuance of the Notification under Section 4, then in terms of the judgment dated 04.05.2016, passed by the Hon'ble National Green Tribunal in M.A. No. 1166 of 2015 titled T.N. Godavarman Thirumalpad vs Union of India &Ors, the provisions of Forest Conservation Act shall not be applicable to such land and mining leases on the same can

be given by the State Government, making the existing leases issued in favor of the Appellants valid.

- C. **BECAUSE** the Hon'ble Tribunal, in its judgment dated 04.05.2016, had clearly held that the mining leases on the areas notified under Section 4 of the Forest Act, for which settlement rights have been finalized pursuant to the judgment in Banvasi Seva Ashram case dated 20.11.1986, shall be cancelled by the State of Uttar Pradesh. Thus, the judgment of the Hon'ble Tribunal is only applicable to leases which were given over lands notified as reserved forest under the Notification under Section 4 and which continued to be so after the settlement of rights in terms of judgment in Banvasi Seva Ashram case. It was not applicable to leases where the land was excluded in the settlement of rights itself on the ground that it was not forest land, as is the situation with the Appellants. The judgment dated 04.05.2016 confirms the finality of the settlement proceedings, held and concluded in terms of the judgment of this Hon'ble Court,

and does not sit in appeal over them, as it is incapable of doing in any case.

- D. **BECAUSE** the direction of the Hon'ble Tribunal in the judgment dated 04.05.2016 is in the context of cases where the land, after the conclusion of the settlement proceedings in 1994, was confirmed and categorized as forest land, but was later sought to be excluded through re-opening of the settlement proceedings, as was done in the case of M/s Jay Prakash Associates Ltd, which essentially was the subject matter of the proceedings before the Hon'ble Tribunal in M.A. No. 1166 of 2015. It is not applicable to cases where the land was excluded in the original settlement proceedings itself, as was done in the case of the Appellants.
- E. **BECAUSE** no notices were issued by the Hon'ble Tribunal to the Appellants, which has resulted in their leases being unfairly and wrongly cancelled without them ever being heard or being allowed to place their defense, which is in gross violation of the principles of natural justice and the universally accepted rule of 'Audi Alteram Partem'.

- 5
- F. **BECAUSE** the Hon'ble National Green Tribunal has not followed the principle of 'Audi Alteram Partem' while deciding the present Original Application as it is settled law that no punishment/penalty can be imposed on a person without him being heard.
- G. **BECAUSE** the Hon'ble Tribunal failed to take into account that it has been settled by this Hon'ble Court in a catena of judgments that no one should be condemned without being heard and that all parties must be given an opportunity of being heard. Passing an order prejudicial to any person, without affording him a reasonable opportunity of being heard, is violative of the principles of natural justice, which is a crucial tenet of civilized justice system.
- H. **BECAUSE** the Hon'ble Tribunal failed to consider that it has been held by this Hon'ble Court in Maneka Gandhi vs Union of India [1978 AIR SC 597] that Article 14 is an authority for the proposition that the principles of natural justice are an integral part of the guarantee of equality assured by Article 14 and an order depriving a person of his civil right,

6
passed without affording him an opportunity of being heard, suffers from the vice of violation of natural justice.

- I. **BECAUSE** the Hon'ble Tribunal gravely erred in not taking into account that principles of natural justice are great humanizing principles intended to invest law with fairness and to secure justice and that it is clearly established that a man cannot incur the loss of liberty or property for an offence by a judicial proceeding until he has had a fair opportunity of answering the case against him.
- J. **BECAUSE** the Hon'ble Tribunal further gravely erred in relying upon the erroneous judgment dated 13.07.2018 passed by the Hon'ble Tribunal in O.A. No. 429/2016, which is based on a clear misinterpretation of the judgment dated 04.05.2016 passed by the Hon'ble Tribunal in M.A. No. 1166 of 2015 and is under challenge before this Hon'ble Court.
- K. **BECAUSE** the Hon'ble Tribunal erred in holding in its order dated 04.01.2019, passed in O.A. No. 781/2018, that all the relevant orders, including the orders dated 04.10.2007 and 14.02.2006, were noticed by the Hon'ble

Tribunal at the time of passing of the judgment dated 13.07.2018 and it had been held by the judgment dated 13.07.2018 that in view of order dated 04.10.2007, the order dated 14.02.2006 passed by the Hon'ble High Court could not be followed. The fact of the matter is that neither the order dated 14.02.2006 nor the order dated 04.10.2007 have either been mentioned or discussed or deliberated upon in the judgment dated 13.07.2018 passed by the Hon'ble Tribunal.

- L. **BECAUSE** the Hon'ble Tribunal gravely erred in reaching the conclusion in its order dated 04.01.2019 passed in O.A. No. 781/2018 that the order dated 14.02.2006 passed by the Hon'ble High Court could not be followed in light of the order dated 04.10.2007 passed by the Hon'ble High Court in Writ Petition (C) No. 41578/2007 titled Ravinder Kumar Singh &Ors vs Additional District Judge, Sonbhadra & Ors, in which a Division Bench of the Hon'ble High Court had held that the order dated 14.02.2006 was not good precedent and will not be applicable to other cases.

PRAYER

6. It is therefore, most respectfully prayed that this Hon'ble Court may be pleased to:

- (a) Admit and allow the Appeal and set aside the impugned judgment and final order dated 25.03.2019 passed by the Hon'ble National Green Tribunal, Principal Bench, New Delhi, in O.A. No. 781/2018; and
- (b) Pass such other order or orders as may be deemed fit and proper by this Hon'ble Court.

AND FOR THIS ACT OF KINDNESS, THE APPELLANTS AS IS DUTY BOUND SHALL EVER PRAY.

Drawn and Filed by

Utkarsh Sharma

(Utkarsh Sharma)

Advocate for the Appellants

Drawn on: 30.5.2019

Filed on: 31.05.2019



59

47

IN THE SUPREME COURT OF INDIA
(CIVIL APPELLATE JURISDICTION)
CIVIL APPEAL NO. _____ OF 2019

IN THE MATTER OF:

Sarvam Enterprises and Ors



Amit Pandey and Ors.

VERSUS

FILED ON

31 MAY 2019

Appellants

Respondents

AFFIDAVIT

SUPREME COURT OF INDIA

52112

I, Suresh Garg, S/o Ram Swarup Garg, aged about 59 years, partner M/s Neelkanth Mining, R/o. Main Market Ward No. 08, Sendurhari, Chopan, Tehsil- Robertsganj, District- Sonbhadra, Uttar Pradesh- 231205, presently at New Delhi do hereby solemnly affirm and state on oath as under :-

1. That I am the Appellant no. 02 herein and authorized to represent appellant no. 01 & 05 and well acquainted with the facts and circumstances of the present case and hence competent to swear this affidavit.

2. That I have gone through the averments made in paragraphs 1 to 6 (pages 3 to 45) of the accompanying Civil Appeal under Section 22 of the National Green Tribunal Act, 2010 and pages B to I of the Synopsis, List of Dates and I.As and I have fully understood the same. I say that averments made therein are all true and correct to my knowledge and belief based on the records of the case.

3. That annexures annexed with the Appeal are true copies of their respective originals.



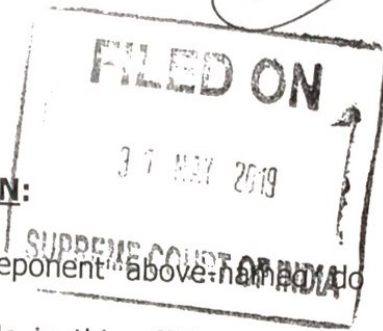
141

48

सुरेश कुमार

DEPONENT

60



VERIFICATION:

I, the Deponent above-named do hereby verify that averments made in this affidavit are true to the best of my knowledge and belief. No part of it is false and nothing material has been concealed therefrom.

Verified at New Delhi on this 31 day of May, 2019.



सुरेश कुमार

DEPONENT

IDENTIFIED BY



ATTESTED

Notary Public, Delhi
(As Presented)

31/05/19

[Signature]

// TRUE COPY //

ITEM NO.1 Court 7 (Video Conferencing)

SECTION XVII

S U P R E M E C O U R T O F I N D I A

R E C O R D O F P R O C E E D I N G S

Civil Appeal No(s). 12202/2018

DHARMENDRA KUMAR SINGH

Appellant(s)

VERSUS

THE STATE OF UTTAR PRADESH & ORS.

Respondent(s)

(FOR DIRECTION

IA No. 63684/2019 - EXEMPTION FROM FILING O.T.

IA No. 63672/2019 - PERMISSION TO FILE ADDITIONAL DOCUMENTS/FACTS/ANNEXURES)

WITH

C.A. No. 11368/2018

(FOR EXEMPTION FROM FILING O.T. ON IA 154883/2018 FOR PERMISSION TO FILE ADDITIONAL DOCUMENTS/FACTS/ANNEXURES ON IA 50301/2019 FOR CLARIFICATION/DIRECTION ON IA 57660/2019 FOR EXEMPTION FROM FILING O.T. ON IA 150362/2019

IA No. 57660/2019 - CLARIFICATION/DIRECTION

IA No. 150362/2019 - EXEMPTION FROM FILING O.T.

IA No. 154883/2018 - EXEMPTION FROM FILING O.T.

IA No. 50301/2019 - PERMISSION TO FILE ADDITIONAL DOCUMENTS/FACTS/ANNEXURES)

C.A. No. 8804-8805/2019 (XVII)

(IA FOR PERMISSION TO FILE ADDITIONAL DOCUMENTS/FACTS/ANNEXURES ON IA 98938/2019

IA No. 98938/2019 - PERMISSION TO FILE ADDITIONAL DOCUMENTS/FACTS/ANNEXURES)

C.A. No. 5257/2019 (XVII)

Signature Not Verified
 Digitally signed by
 ASHA SUNDERYAL
 Date: 2020.08.10
 18:59:18 IST
 Reason:

IA No.80135/2019-CONDONATION OF DELAY IN FILING and IA No.80142/2019-EXEMPTION FROM FILING C/C OF THE IMPUGNED JUDGMENT and IA No.80146/2019-EXEMPTION FROM FILING O.T. and IA No.80323/2019-EXEMPTION FROM FILING O.T. and IA No.80139/2019-EXTENSION OF EX-PARTY STAY and IA No.80134/2019-PERMISSION TO FILE

APPEAL and IA No.80137/2019-CONDONATION OF DELAY IN REILING and IA No.80144/2019-PERMISSION TO FILE LENGTHY LIST OF DATES and IA No.80321/2019-PERMISSION TO FILE ADDITIONAL DOCUMENTS/FACTS/ANNEXURES)

C.A. No. 5093/2019 (XVII)

(IA FOR PERMISSION TO FILE ADDITIONAL DOCUMENTS/FACTS/ANNEXURES ON IA 104740/2019 FOR EXEMPTION FROM FILING O.T. ON IA 104744/2019 FOR PERMISSION TO FILE ADDITIONAL DOCUMENTS/FACTS/ANNEXURES ON IA 149661/2019 FOR EXEMPTION FROM FILING O.T. ON IA 149662/2019

IA No. 149662/2019 - EXEMPTION FROM FILING O.T.

IA No. 104744/2019 - EXEMPTION FROM FILING O.T.

IA No. 149661/2019 - PERMISSION TO FILE ADDITIONAL DOCUMENTS/FACTS/ANNEXURES

IA No. 104740/2019 - PERMISSION TO FILE ADDITIONAL DOCUMENTS/FACTS/ANNEXURES)

C.A. No. 7002/2019 (XVII)

(IA No.129677/2019-EXEMPTION FROM FILING C/C OF THE IMPUGNED JUDGMENT and IA No.129675/2019-EX-PARTE STAY and IA No.129682/2019-EXEMPTION FROM FILING O.T. and IA No.129673/2019-PERMISSION TO FILE APPEAL and IA No.129680/2019-PERMISSION TO FILE LENGTHY LIST OF DATES and IA No.129683/2019-PERMISSION TO FILE ADDITIONAL DOCUMENTS/FACTS/ANNEXURES)

Date : 10-08-2020 These matters were called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE SANJAY KISHAN KAUL

HON'BLE MR. JUSTICE AJAY RASTOGI

For Appellant(s) Mr. S.P. Singh, Sr. Adv.
Mr. Raunak Parekh, Adv.
Mr. Mrinal Gopal Elker, AOR

Mrs. Rachna Gupta, AOR

Mr. Utkarsh Sharma, AOR
Mr. Sharad Chauhan, Adv.

For Respondent(s) Mr. Tushar Mehta, SG

Mr. V. Shekhar, Sr. Adv.
Mr. Rajeev Kumar Dubey, Adv.
Mr. Kamendra Mishra, AOR

Mr. N. Venkatraman, ASG
Mr. Gurmeet Singh Makker, AOR
Mr. Rajan Kumar Chaurasia, Adv.
Ms. Suhasini Sen, Adv.

Mr. T. N. Singh, AOR
Mr. Pranaya Kumar Mohapatra, AOR

UPON hearing the counsel the Court made the following

O R D E R

Applications for exemption from filing official translation, and c/c of the impugned judgment are allowed.

Applications for permission to file additional documents/facts/annexures and lengthy list of dates are allowed.

We have perused the additional affidavit filed by the State of Uttar Pradesh. The stand of the State of Uttar Pradesh in response to the order dated 15th July, 2020 is that no permission for mining can be granted for the obstructed period as there does not exist any provision for grant of permission for mining in case of disruption of mining operations under the Uttar Pradesh Mining Mineral (Concessions) Rules, 1963. The State Government seeks to rely upon certain judgments of the Allahabad High Court which have been annexed to the affidavit.

On a Court query, learned senior counsel for the State of Uttar Pradesh, on instructions, states that the State is willing to refund the proportionate amount of the lease money for which period

the lease has not been permitted to operate.

On the other hand, learned senior counsel for the appellant states that there are judgments supporting the proposition that in such a situation the lease should be extended. At his request, two weeks' time is granted to file an affidavit with documents and the said judgments.

In view of the aforesaid, the only aspect which will have to be examined by this Court is whether in view of the judicial pronouncements, the appropriate order to pass would be for refund of the lease amount for the period it was not permitted to operate or whether the lease is liable to be renewed for that period of time.

List on 26th August, 2020.

(ASHA SUNDRIYAL)

AR-CUM-PS

(ANITA RANI AHUJA)

ASSISTANT REGISTRAR



// TRUE COPY //

DHARMENDRA KUMAR SINGH v. STATE OF U.P.

93

(2021) 1 Supreme Court Cases 93

(BEFORE SANJAY KISHAN KAUL AND HRISHIKESH ROY, JJ.)

2J

a DHARMENDRA KUMAR SINGH . . . Appellant;

Versus

STATE OF UTTAR PRADESH AND OTHERS . . . Respondents.

Civil Appeals No. 12202 of 2018[†] with Nos. 5093 of 2019[‡], 5257,
7002 of 2019 and 11368 of 2018, decided on October 28, 2020

b **A. Mines and Minerals (Development and Regulation) Act, 1957 — Ss. 4 to 8-A and S. 15 — Fresh grant or extension of mining lease — Manner in which permissible — Expression “in the interest of mineral development it is necessary so to do...” occurring in R. 68 of the 1963 Mining Rules — Interpretation and Applicability — Held, statutory provision of R. 68 of the 1963 Mining Rules is in the nature of a relaxation rule in special cases and has to be read with the Rules which provide the manner in which the exploitation of minerals should take place — Thus, if a fresh grant or extension of a mining lease has to be made under the Mining Rules, it must be in accordance with Ch. II, and the provision for auction of leases in Ch. IV of the 1963 Mining Rules is in furtherance of a transparent procedure — Extension of mining lease cannot be granted by exercise of power under R. 68 of the 1963 Mining Rules**

d — Held, objective of exercising power under R. 68 of the 1963 Mining Rules should be to aid development of minerals — Statutory rules have been worded in a restrictive manner deliberately giving only a restricted window and this legislative intent ought not to be defeated by supplanting it with any other interpretation — When words of statutory rules or statutory provision are clear and unambiguous, recourse to different principles of interpretation, other than rule of literal construction, cannot be resorted to — Interpretation of Statutes — Basic Rules — Liberal or strict construction — U.P. Minor Minerals (Concession) Rules, 1963, R. 68

e **B. Mines and Minerals (Development and Regulation) Act, 1957 — Ss. 4 to 8-A — Fresh grant or extension of mining lease — Manner in which permissible — Fresh grant or extension of mining lease, held, can only be granted strictly in compliance with the Rules and Policy in force at the relevant time — Disruption of mining operations by reason of judicial interdict — Effect of — Maxim actus curiae neminem gravabit — When not applicable**

f — Held, disruption due to judicial interdict itself will not give window to extend lease without compliance with statutory provisions, especially when terms of lease and the Rules (1963 Mining Rules in present case) do not provide for consequences of any judicial interdict or other reason for disruption of operation of the lease, other than refund of security deposit and advance royalties paid, if any — As leases in present case were prevented from operation for no fault attributable to leaseholders, held, they were entitled to refund of security deposit and advance royalty paid, with 9% interest

h [†] Arising from the Judgment and Order in *All India Kalmur People's Front v. State of U.P.*, 2018 SCC OnLine NGT 1514 (National Green Tribunal, OA No. 429 of 2016, dt. 13-7-2018)

[‡] Arising from the Judgment and Order in *Amit Pandey v. State of U.P.*, 2019 SCC OnLine NGT 1403 (National Green Tribunal, OA No. 781 of 2018, dt. 25-3-2019)

— In the event of disruption of mining operation in lease area owing to any special circumstances all that the statute has provided is monetary adjustment i.e. that if some amounts have been paid as instalments under mining lease for the period when beneficiary is not able to operate mining area, only that amount is liable to be refunded — However, appellants in instant case have suffered and plea advanced on their behalf was that if there were interdicts posed by a competent court that should not put a party at a disadvantage — This rule is ordinarily to be accepted for placing a successful party in the same position, which they had been in, if the wrong complained against them would not have been done to them — However, this cannot be a blanket proposition and the context has to be considered in which interdict was passed i.e. to preserve forest area — It is a different matter that some leases were ultimately found as within restricted area and some outside (as is the case of the appellants)

— Even taking Notification of State of U.P. dt. 31-7-2014 into account, and authorisation of District Magistrates to extend lease where no third-party interest was created and the leases were prevented from operation for no fault attributable to leaseholders, held, subsequent transparent New Mining Policy of 2017 would weigh in favour of not exercising jurisdiction to extend leases for obstructed period — Thus the appropriate course of action to be adopted in this case cannot be to extend lease for obstructed period but to direct that the security deposit, if not already refunded, should be refunded and the amount deposited by appellants/leaseholders as advance royalties to respondent State be also paid back to them along with something more

— Environment Law — Environment (Protection) Act, 1986 — Ss. 6 and 25 — Forest Act, 1927 — Ss. 4 and 20 — Debt, Financial and Monetary Laws — Interest — Restitutionary interest — Refund of security deposit and advance royalty paid when leases prevented from operation due to no fault of leaseholders — Entitlement to interest thereon — U.P. Minor Minerals (Concession) Rules, 1963, Rr. 68 and 40(h)

It was contended by the State of U.P. that no permission for mining can be granted for the obstructed period as there does not exist any provision for grant of such permission for mining in case of disruption of mining operations under the U.P. Minor Minerals (Concession) Rules, 1963 (“the Mining Rules”). It is also contended that there was no legal provision/rule or any provision in the respective lease deeds to pay damages in case of disruption of mining leases and the consequences of such disruption are set out in Rule 40(h) of the Mining Rules. As per Rule 40(h) of the Mining Rules in the event of disruption of mining operations in the leased areas owing to any special circumstances, the DM, with the prior approval of the State Government shall adjust the amount equivalent to the instalment payable during the disrupted period against the forthcoming instalment. Thus, it was contended that the State of U.P. is only liable to refund (i) any security deposit, or (ii) advance royalties paid to it. It was emphasised that in view of the judicial pronouncement in *Vijay Kumar Dwivedi*, 2016 SCC OnLine All 3548 it is clear that after 31-5-2012, no permission for mining can be granted to excavate during the obstructed period. In the absence of any provision under the Mining

a
b
c
d
e
f
g
h

a Rules for grant of extension of expired mining lease or renewal of the same for the obstructed period in case of disruption to mining operation, any extension of lease was contended to be unsustainable in law.

b The AIKPF contended that the prohibition of mining in ESZ declared around the Kaimur National Park was not being challenged by the appellants, hence the consequences of mining activity for the obstructed period did not facilitate extension of leases. The aspect arising from the G.O. dated 31-5-2012 and the contentions of the State Government in that behalf was also sought to be supported by the observations of the Supreme Court in *Deepak Kumar*, (2012) 4 SCC 629 which in turn had extracted the recommendations of the Ministry of Environment and Forest regarding the definition of the term “minor mineral”, which it said meant building stone, gravel, ordinary clay, ordinary sand other than sand used for prescribed purposes and any other material which the Central Government may, by notification declare to be a minor mineral.

c The plea of the State of non-grant of extension of leases is stated by the appellants to be contrary to record as that power has been exercised in the past under Rule 68 of the Mining Rules. Rule 68, it was urged, is comprehensive and complete in all respects and in the absence of any specific legislation recourse can be had to the said Rule. On a linked aspect it was contended that the ordinary rule is that the Court should try to place the successful party in the same position which they had been in, if the wrong complained against them would not have been done to them. Moreover, it was argued that, it is a well-settled proposition of law that an act of the Court shall prejudice no one and the same is reflected in the maxim, “*Actus curiae neminem gravabit*”.

d It was contended that factual matrix dealt with the issue of extension of mining leases and the State of U.P. had issued a Notification dated 31-7-2014 to all DMs stating wherever no third-party interest had been created, the area is vacant and it is established that the leaseholder has been prevented from operating its mining lease for any period for no fault attributable to them, then the extension of mining lease for the corresponding period can be provided. The appellants plead that the G.O. dated 31-5-2012 and for that matter the New Mining Policy of 2017 will have no bearing as that aspect stands elucidated vis-à-vis the judgment in *Peethambra Granite (P) Ltd.*, 2020 SCC OnLine All 1399 by the High Court of Judicature at Allahabad. In this case, the directions issued in *Vijay Kumar Dwivedi*, 2016 SCC OnLine All 3548 have been held to have no application to granite building stone (in situ rock) as the mineral was not covered by the G.O. dated 31-5-2012. This aspect is stated to have been clarified by the subsequent G.O. dated 26-2-2013 and the G.O. dated 22-10-2014, the latter, in fact, cancelled the G.O. dated 31-5-2012 as also the G.O. dated 26-2-2013. Since 31-5-2012 itself, a total of 35 mining leases are stated to have been granted or renewed in District Sonbhadra.

The issues for determination before the Supreme Court were:

e (i) Whether disruption of mining operations by reason of a judicial interdict itself will give window to extend the lease by not following the statutory provisions, especially when the terms of the lease do not provide for any consequences thereof.

96

SUPREME COURT CASES

(2021) 1 SCC

(ii) If the leases were prevented from operation for no fault attributable to the leaseholders, what should be appropriate course of action to be adopted by the Supreme Court.

a

Held :

A mere filing of an application either for the grant of a lease or for the renewal of a lease does not confer a vested right for either grant or renewal of a lease. The statutory provision of Rule 68 of the Mining Rules is in the nature of a relaxation rule in special cases and has to be read with the Rules which provide the manner in which the exploitation of minerals should take place. Thus, the expression used is “in the interest of mineral development it is necessary so to do...”. The idea, thus, is that the objective of exercising such power should be to aid the development of minerals and such judicial view is of significance as there was always a possibility of the misuse of such power, considering the history of mineral exploitation in our country. The statute was worded in a restrictive manner deliberately giving only a restricted window and this legislative intent ought not to be defeated by supplanting it with any other interpretation. It is a well-settled principle of interpretation that when the words of a statute are clear and unambiguous, recourse to different principles of interpretation, other than the rule of literal construction, cannot be resorted to. If a fresh grant or extension has to be made under the Mining Rules, it must be in accordance with Chapter II, and the provision for auction of leases in Chapter IV of the Mining Rules is in furtherance of a transparent procedure. (Para 36)

b

c

d

DTC v. Balwan Singh, (2019) 18 SCC 126, *relied on*

Sukhan Singh v. State of U.P., 2014 SCC OnLine All 14627 : (2015) 2 All LJ 619; *Mohd. Yunus Hasan v. State of U.P.*, 2016 SCC OnLine All 3535 : (2016) 4 All LJ 4; *Vijay Kumar Dwivedi v. State of U.P.*, 2016 SCC OnLine All 3548 : (2016) 4 All LJ 690, *approved*

e

The right to extension of lease either flows from a statutory provision or from the terms of the lease between the parties concerned. If there has been an obstructed period by reason of a judicial interdict, that itself will not give window to extend the lease by not following the statutory provisions, especially when the terms of the lease do not provide for any consequences thereof. (Para 37)

The G.O. dated 31-5-2012 was clarified by the subsequent G.O. dated 26-2-2013 and then both the G.Os. were cancelled vide G.O. dated 22-10-2014, which would hold the field. In pursuance thereof, 35 mining leases are stated to have been issued but that itself would not make a difference because what is to be seen are the subsequent developments and what course can be adopted as on date. The State of U.P. had issued a New Mining Policy on 12-6-2017 and this policy has no provision for grant of extension of time for obstructed period of mining lease and all mining leases were to be permitted by e-tendering or e-auction alone. If the mining lease is extended for the obstructed period, it would amount to violation of this New Mining Policy and since the extension would have to be granted now, the contention of the appellants that this should relate back to the date of the lease and not as on date, cannot be accepted. (Paras 39 and 40)

f

g

h

DHARMENDRA KUMAR SINGH v. STATE OF U.P.

97

a The statutory rule, Rule 40(h) of the Mining Rules provides for the consequences of the disruption of mining operations in a lease area owing to any special circumstances and requires the DM, with the prior approval of the State Government, to adjust the amount equivalent to the instalments payable during the disrupted period against forthcoming instalments. Thus, monetary adjustment is all that has been provided for by the statute making the legislative intent obvious i.e. that if some amounts have been paid as instalments under the mining lease for the period when the beneficiary is not able to operate the mining area, only that amount is liable to be refunded. This is what forms the basis of the submission made on behalf of the State of U.P. that they are only liable to refund (i) any security deposit; or (ii) advance royalties paid to them, for this obstructed period. (Para 41)

c The appellants have suffered in the second round and the plea advanced on their behalf that if there were interdicts posed by a competent court that should not put a party at a disadvantage. This rule is ordinarily to be accepted for placing a successful party in the same position, which they had been in, if the wrong complained against them would not have been done to them. However, this cannot be a blanket proposition and we have to consider the context in which the interdict was passed i.e. to preserve the forest area. It is a different matter that some leases were ultimately found as within the restricted area and some outside (as is the case of the appellants). Even if the Notification of the State of U.P. dated 31-7-2014 is taken into account, and the authorisation of the DMs to extend the lease where no third-party interest was created and the leases were prevented from operation for no fault attributable to the leaseholders, the subsequent transparent Policy of 2017 would weigh in favour of not exercising the jurisdiction to extend the leases for the obstructed period. (Para 42)

e *Beg Raj Singh v. State of U.P.*, (2003) 1 SCC 726; *Nar Narain Mishra v. State of U.P.*, 2013 SCC OnLine All 13919; *Sulekhan Singh & Co. v. State of U.P.*, (2016) 4 SCC 663, considered

f Thus, the appropriate course of action to be adopted in this case cannot be to extend the lease for the obstructed period but to direct that the security deposit, if not already refunded, should be refunded and the amount deposited by the appellants/leaseholders as advance royalties to the respondent State be also paid back to them along with something more. Keeping in mind that the appellants' monies have remained blocked and mining prevented for no fault of theirs, despite success in earlier legal proceedings, and this aspect has to be balanced with the statutory provision or for that matter, even the contractual provisions not providing for extension of leases, and since these monies have remained blocked, the monies should carry simple interest @ 9% p.a. (Paras 43 and 44)

g The appeals are, thus, decided as aforesaid with the limited directions and to the extent the observations in the impugned order are in contradiction thereto are set aside. (Para 46)

h *J.P. Yadav v. Kanhaiya Singh*, (2021) 1 SCC 116, impliedly distinguished and not followed
All India Kalmur People's Front v. State of U.P., 2018 SCC OnLine NGT 1514; *Amit Pandey v. State of U.P.*, 2019 SCC OnLine NGT 1403, partly reversed and modified

98 SUPREME COURT CASES (2021) 1 SCC

Jagdish Prasad Nishad v. State of U.P., 2015 SCC OnLine All 7495 : (2015) 128 RD 150, impliedly overruled

T.N. Godavarman Thirumulpad v. Union of India, 2016 SCC OnLine NGT 1187; *Banwasi Seva Ashram v. State of U.P.*, (1986) 4 SCC 753; *Ved Prakash Garg v. Addl. District & Sessions Judge*, WP No. 29546 of 2003, order dated 14-2-2006 (All); *State of U.P. v. Ved Prakash Garg*, 2018 SCC OnLine SC 3631, considered

Deepak Kumar v. State of Haryana, (2012) 4 SCC 629; *Qaiser Shikoh v. All India Kaimur Peoples Front*, 2018 SCC OnLine SC 3632; *Dharmendra Kumar Singh v. State of U.P.*, 2018 SCC OnLine SC 3633; *Dharmendra Kumar Singh v. State of U.P.*, 2020 SCC OnLine SC 890; *Dharmendra Kumar Singh v. State of U.P.*, 2020 SCC OnLine SC 891; *Vilayati Ram Mittal v. State of U.P.*, 2016 SCC OnLine SC 1896; *Peethambra Granite (P) Ltd. v. State of U.P.*, 2020 SCC OnLine All 1399; *State of U.P. v. All India Kalmur Peoples Front*, 2020 SCC OnLine SC 892, referred to

RM-D/66404/C

Advocates who appeared in this case :

V. Shekhar, Mukul Rohatgi, S.P. Singh and Ranjit Kumar, Senior Advocates, for the appearing parties.

Chronological list of cases cited

	<i>on page(s)</i>	
1. (2021) 1 SCC 116, <i>J.P. Yadav v. Kanhaiya Singh</i>	109g, 110a, 110a-b	
2. 2020 SCC OnLine All 1399, <i>Peethambra Granite (P) Ltd. v. State of U.P.</i>	110e-f	
3. 2020 SCC OnLine SC 892, <i>State of U.P. v. All India Kalmur Peoples Front</i>	111c	
4. 2020 SCC OnLine SC 891, <i>Dharmendra Kumar Singh v. State of U.P.</i>	105b-c	
5. 2020 SCC OnLine SC 890, <i>Dharmendra Kumar Singh v. State of U.P.</i>	104g	d
6. (2019) 18 SCC 126, <i>DTC v. Balwan Singh</i>	112g	
7. 2019 SCC OnLine NGT 1403, <i>Amit Pandey v. State of U.P. (partly reversed)</i>	101d-e	
8. 2018 SCC OnLine SC 3633, <i>Dharmendra Kumar Singh v. State of U.P.</i>	104d-e	
9. 2018 SCC OnLine SC 3632, <i>Qaiser Shikoh v. All India Kaimur Peoples Front</i>	104d-e	
10. 2018 SCC OnLine SC 3631, <i>State of U.P. v. Ved Prakash Garg</i>	103g	e
11. 2018 SCC OnLine NGT 1514, <i>All India Kalmur People's Front v. State of U.P. (partly reversed)</i>	101c-d, 101d, 101d-e, 104a-b, 105e, 105f, 105f-g, 111g	
12. (2016) 4 SCC 663, <i>Sulekhan Singh & Co. v. State of U.P.</i>	106c-d, 108e, 114a-b	
13. 2016 SCC OnLine All 3548 : (2016) 4 All LJ 690, <i>Vijay Kumar Dwivedi v. State of U.P.</i>	107a, 108a, 110e-f, 113b	f
14. 2016 SCC OnLine All 3535 : (2016) 4 All LJ 4, <i>Mohd. Yunus Hasan v. State of U.P.</i>	106d, 107a-b, 112e	
15. 2016 SCC OnLine SC 1896, <i>Vilayati Ram Mittal v. State of U.P.</i>	108e	
16. 2016 SCC OnLine NGT 1187, <i>T.N. Godavarman Thirumulpad v. Union of India</i>	100a, 104a-b, 104b-c, 109f, 111e-f	
17. 2015 SCC OnLine All 7495 : (2015) 128 RD 150, <i>Jagdish Prasad Nishad v. State of U.P. (impliedly overruled)</i>	110a	g
18. 2014 SCC OnLine All 14627 : (2015) 2 All LJ 619, <i>Sukhan Singh v. State of U.P.</i>	106b, 112d-e	
19. 2013 SCC OnLine All 13919, <i>Nar Narain Mishra v. State of U.P.</i>	106c-d, 108b, 108e, 108e-f, 114a	b
20. (2012) 4 SCC 629, <i>Deepak Kumar v. State of Haryana</i>	109a-b	

DHARMENDRA KUMAR SINGH v. STATE OF U.P. (*Sanjay Kishan Kaul, J.*) 99

21. WP No. 29546 of 2003, order dated 14-2-2006 (All), *Ved Prakash Garg v. Addl. District & Sessions Judge* 103e-f
- a 22. (2003) 1 SCC 726, *Beg Raj Singh v. State of U.P.* 110b-c, 114c-d
23. (1986) 4 SCC 753, *Banwasi Seva Ashram v. State of U.P.* 103b-c, 104c-d, 106a, 109d, 109f

The Judgment of the Court was delivered by

b **SANJAY KISHAN KAUL, J.**— An ideological battle often rages between preservation of environment and economic development. Mining activity and the manner in which it is carried on has had its proponents and opponents. Its necessity as an input for economic development is recognised but mining activity throughout our country for minerals or sands has had a troubled history on account of large-scale violations. This has also resulted in a ban on mining activity in certain areas at certain times—not the ideal method, but leaving little c option open because of the rampant misuse of the licences to mine. The present litigation, in a sense, flows from the concern to regulate mining activity in eco-sensitive areas.

The factual development

d 2. The fact flow of the present case shows that what we are faced with today has its seeds in prior litigation and orders passed in the past in the interest of ecology, yet some persons who had succeeded in the initial battle to carry out mining activity are faced with the consequences of orders passed in other litigations. It is this conundrum, which would have to be resolved by this Court.

e 3. Mining leases granted to projects in the mineral rich district of Sonbhadra, carved out of District Mirzapur in the State of Uttar Pradesh (for short “State of U.P.”) in 1989 is the starting point. The All India Kaimur People’s Front (for short “AIKPF”) filed an application before the National Green Tribunal, New Delhi (for short “NGT”), being OA No. 429 of 2016, inter alia, seeking directions for immediate prohibition of alleged illegal mining in the vicinity of Kaimur Wildlife Sanctuary located in Village Billi Markundi in f Sonbhadra District. The area being ecologically sensitive and preservation of wildlife being the objective, the NGT issued notices in the matter.

g 4. In pursuance of this initial development, Notification dated 20-3-2017 was issued by the Ministry of Environment, Forest and Climate Change (for short “MoEFCC”) declaring the “area in question” as an eco-sensitive zone (for short “ESZ”) under sub-section (1) and clauses (v) and (xiv) of sub-section h (2) and sub-section (3) of Section 3 of the Environment (Protection) Act, 1986 (hereinafter referred to as “EPA”). The State of U.P. set out the factual position about the grant of leases before the NGT in an affidavit filed in this behalf. Thirty-three leases were stated to be operational outside ESZ. NGT called upon the State of U.P. to explain the position of these leases in view of the order it had passed on 4-5-2016 in *T.N. Godavarman Thirumulpad v. Union of*

100

SUPREME COURT CASES

(2021) 1 SCC

*India*¹ by way of which the NGT had directed the State of U.P. to cancel all mining leases and all other non-forestry activities on the areas notified under Section 4 of the Forest Act, 1927 (hereinafter referred to as “the Forest Act”). In order to appreciate the ramifications, Section 4 of the Forest Act is extracted hereinafter: a

“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— b

(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. c

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. d

(2) The officer appointed under clause (c) of sub-section (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.” e

The purport of the notification is, thus, to specify as to what lies within the limits of reserved forest area.

5. The NGT in the said proceedings noted the admission of the State of U.P. that some active leases still remained in force on lands which were covered under the Notification issued under Section 4 of the Forest Act for which the corresponding notification under Section 20 of the Forest Act had still not been issued. Section 20 of the Forest Act reads as under: f

“20. Notification declaring forest reserved.—(1) When the following events have occurred, namely— g

(a) the period fixed under Section 6 for preferring claims have elapsed and all claims if any made under that section or Section 9 have been disposed of by the Forest Settlement Officer;

h

DHARMENDRA KUMAR SINGH v. STATE OF U.P. (*Sanjay Kishan Kaul, J.*) 101

a (b) if any such claims have been made, the period limited by Section 17 for appealing from the orders passed on such claims has elapsed, and all appeals (if any) presented within such period have been disposed of by the appellate officer or Court; and

(c) all lands (if any) to be included in the proposed forest, which the Forest Settlement Officer has, under Section 11, elected to acquire under the Land Acquisition Act, 1894 (1 of 1894), have become vested in the Government under Section 16 of that Act,

b the State Government shall publish a notification in the Official Gazette, specifying definitely, according to boundary-marks erected or otherwise, the limits of the forest which is to be reserved, and declaring the same to be reserved from a date fixed by the notification.

(2) From the date so fixed such forest shall be deemed to be a reserved forest.”

c 6. Thus, what had not been done was that the consequences of the area falling in the reserved forest area in terms of Section 4 Notification did not follow a Notification under Section 20 of the Forest Act. The NGT, thus, directed vide order dated 13-7-2018² that all leases under Section 4 area be prohibited by the State of U.P. forthwith. The review filed by the State of d U.P. came to be dismissed vide order dated 29-8-2018. We may note at this stage that what is impugned is the aforesaid order dated 13-7-2018² by the appellants before us, except for the appellants in CA No. 5093 of 2019 where order dated 25-3-2019³ of the NGT has been impugned. However, this order was also decided in terms of the main impugned order dated 13-7-2018².

e 7. The fallacy, in our view, which occurred in the proceedings before the NGT was that leaseholders of the leases were not made parties, not even in a representative capacity, yet, they suffered the consequences of the aforesaid order inasmuch as the District Magistrate (for short “DM”), Sonbhadra, issued administrative orders (on 29-8-2018 and 5-2-2019) in pursuance of the aforesaid order of the NGT prohibiting mining and transportation of gittis/ f boulders till the next order. This effectively stopped the mining activity. The appellants naturally being aggrieved filed appeals before this Court as being the affected parties under Section 22 of the National Green Tribunal Act, 2010 (hereinafter referred to as “the NGT Act”) arraying the State of U.P., its departments and officers concerned, MoEFCC, as well as AIKPF (the original petitioners before the NGT) as the respondents. The appeals, inter alia, are g predicated on the respective lands and corresponding leases being actually excluded from the purview of the Notification issued under Section 4 of the Forest Act, the lands in question being “pahadh lands” i.e. uncultivable waste lands belonging to the Revenue Department.

h
2 *All India Kalmur People's Front v. State of U.P.*, 2018 SCC OnLine NGT 1514
3 *Amit Pandey v. State of U.P.*, 2019 SCC OnLine NGT 1403

8. Since there are different appeals and different dates involved, for clarity of facts, we are setting forth below the particulars of the lease details and the suspension orders of the respective appellants as under:

Sl. Nos.	Civil appeals	Material	Village	Lease duration	Date of suspension order
1.	CA No. 12202 of 2018 Dharmendra Kumar Singh	Dolostone (boulder)/gitti	Billi Markundi	29-6-2009 to 28-6-2019	29-8-2018
2.	CA No. 11368 of 2018 Qaiser Shikoh	Dolostone (boulder)/gitti	Billi Markundi	17-2-2011 to 16-2-2021	29-8-2018
3.	CA No. 5257 of 2019 Dev Prakash	Small stone/Gitti/dolostone	Billi Markundi	7-7-2009 to 6-7-2019 (extended to 10-3-2020)	29-8-2018
	Govind Agarwal	Small stone/gitti/boulder/dolostone	Billi Markundi	14-7-2009 to 13-7-2019 (extended to 17-3-2020)	29-8-2018
	Bhanu Prakash	Small stone/gitti/boulder/dolostone	Billi Markundi	7-12-2008 to 6-12-2018 (extended to 10-8-2019)	29-8-2018
4.	CA No. 5093 of 2019 Sai Ram Enterprises Neelkanth Mining (the only claim in this civil appeal since other lease periods have not started) Gyanendra Tripathi C.S. Infrasconstruction Amit Enterprises	Building stone (dolostone), khanda, grit, boulder, etc.	Billi Markundi	New lease through e-tender process 11-12-2018 to 10-12-2028	5-2-2019
5.	CA No. 7002 of 2019 Krishnaanand Singh	Gitti/boulder	Billi Markundi	From 3-3-2007 to 2-3-2017	29-8-2018

Prior litigations

9. In order to appreciate the contention of the appellants, it would be apposite to trace out two lines of legal developments, which have arisen since the issuance of notification under Section 4 of the Forest Act wherein lies

DHARMENDRA KUMAR SINGH v. STATE OF U.P. (*Sanjay Kishan Kaul, J.*) 103

the genesis of the dispute. The first line of legal development arose from Notification No. 3723/14-b-4(67)69 dated 5-11-1969 issued by the State of U.P. under Section 4 of the Forest Act. The Notification included in its compass large tracts of land in Village Billi Markundi declaring that it has been decided to constitute such land as reserved forest. The corresponding notification under Section 20 of the Forest Act was to be issued. However, the 1969 Notification came under scrutiny of this Court upon a letter being received from the Banwasi Seva Ashram operating in Sonbhadra District highlighting the plight of the Adivasis living in the area and their related rights with respect to the land. The adjudication resulted in a judgment being pronounced on 20-11-1986 in *Banwasi Seva Ashram v. State of U.P.*⁴ wherein a slew of directions were passed relating, inter alia, to the land which had been notified under Section 4 of the Forest Act but where no subsequent notification had been issued under Section 20 of that Act. It was directed that the Forest Settlement Officer (for short “FSO”) shall scrutinise all claims and thereafter the matter be placed before the Additional District Judge (for short “ADJ”) as a suo motu appeal. The State Government was required to give effect reserving such lands under Section 20 of the Forest Act which were found to be covered under Section 4 of the Forest Act. Claims were filed before the FSO (including those of the predecessors of the appellants herein) to be excluded from Section 4 Notification and they succeeded in the same. A decision was to be taken by the ADJ as the appellate authority and the order passed by the said authority on 30-9-1994 confirmed the findings of the FSO. The Forest Department thereafter filed a large number of review petitions against that order, which came to be allowed, albeit after a period of eight (8) years, in terms of the order dated 31-5-2003. Thus, the appellants/predecessors of the appellants before us (who were affected parties in those proceedings) approached the High Court by way of different writ petitions and all these petitions came to be allowed in terms of the order in Writ Petition No. 29546 of 2003 titled *Ved Prakash Garg v. Addl. District & Sessions Judge*⁵, which itself was deciding the grievance of a large number of the claimants similarly placed as the appellants herein against the order dated 31-5-2003. The view adopted was predicated on the stand of the State of U.P. itself having taken a decision that the land in question be treated as land belonging to the Revenue Department of the State and on which the mining operations should be permitted. A direction was issued that the application for renewal of mining leases be considered and the order dated 31-5-2003 was set aside. An SLP against this order came to be dismissed by this Court on 22-11-2018, in *State of U.P. v. Ved Prakash Garg*⁶. The proceedings in respect of exclusion of the subject land in question from the purview of Section 4 of the Forest Act, thus, attained finality.

h 4 (1986) 4 SCC 753
5 WP No. 29546 of 2003, order dated 14-2-2006 (All)
6 2018 SCC OnLine SC 3631

10. The second line of litigation pertains to events of 1992 when the Uttar Pradesh State Cement Corporation Ltd. (for short “U.P. SCCL”) became a sick industry and was put to auction where M/s Jayprakash Associates Ltd. (for short “JAL”) emerged as the highest bidders. The significance of this event is that it culminated in the order in *T.N. Godavarman case*¹ dated 4-5-2016, on which considerable reliance has been placed in the impugned order² before us. The assets purchased by JAL included a mining lease of 2168 hectares of area of which some portions were included within Section 4 Notification area. Claims were initiated by JAL praying for exclusion of the said lands from Section 4 Notification. This matter came up to this Court, when in 2010 it was transferred to the NGT. The NGT passed a detailed judgment in this very matter on 4-5-2016¹ with directions, inter alia, to the State of U.P. to cancel all mining leases whether fresh or renewed and all other non-forestry activities on the Section 4 lands and to issue a notification under Section 20 immediately. The effect of these directions was that the finality of the settlement proceedings concluded in terms of *Banwasi Seva Ashram*⁴ case was reiterated and urgency to carry out the process under Sections 4 and 20 of the Forest Act was emphasised.

11. The significance of the aforesaid two rounds of litigation assumes importance in view of the reliance placed on them in the impugned order but also by the appellants to buttress their claim that the procedure with regard to the leases in their favour came to be settled in terms thereof.

The current litigation

12. We now turn to the present civil appeals in which notices were issued^{7, 8} and the matters were clubbed. In the counter-affidavit dated 23-4-2019 filed by the State of U.P. the factual progression discussed aforesaid in respect of the land excluded from the purview of Section 4 was set out. The State of U.P. also sought permission of the Court with respect to issuance of the notification under Section 20 for those lands, which did come under Section 4 of the Forest Act. The question was crystallised in the counter-affidavit as that if the notification under Section 20 had not been issued and certain parts of the lands covered under the notification under Section 4 had been deleted by the competent authorities (i.e. the FSO, thereafter ADJ, and finally the High Court) whether such deleted lands shall be treated as non-forest lands without issuance of notification under Section 20 of the Forest Act. As is the normal working, a series of orders had to be passed by this Court due to delay on behalf of the State of U.P. and it is only on 15-7-2020⁹ that this Court noted that the Section 20 notification had finally been issued on 15-6-2020. Thus, it was noted by this

1 *T.N. Godavarman Thirumulpad v. Union of India*, 2016 SCC OnLine NGT 1187

2 *All India Kalmur People’s Front v. State of U.P.*, 2018 SCC OnLine NGT 1514

4 *Banwasi Seva Ashram v. State of U.P.*, (1986) 4 SCC 753

7 *Qaiser Shikoh v. All India Kaimur Peoples Front*, 2018 SCC OnLine SC 3632

8 *Dharmendra Kumar Singh v. State of U.P.*, 2018 SCC OnLine SC 3633

9 *Dharmendra Kumar Singh v. State of U.P.*, 2020 SCC OnLine SC 890

DHARMENDRA KUMAR SINGH v. STATE OF U.P. (*Sanjay Kishan Kaul, J.*) 105

a Court on that date that the only question now remaining to be determined was with regard to the extension of leases for the period for which the mining leases of the appellants were not permitted to operate and sought the assistance/view of the State of U.P. on this aspect.

b 13. The State respondents filed an additional affidavit dated 6-8-2020 setting forth its stand. It was contended by the State of U.P. that no permission for mining can be granted for the obstructed period as there does not exist any provision for grant of such permission for mining in case of disruption of mining operations under the Uttar Pradesh Mining Minerals (Concession) Rules, 1963 (hereinafter referred to as “the Mining Rules”).^{9a} On 10-8-2020¹⁰ while noticing the aforesaid and upon a query from the Court, the State of U.P. conceded that it was willing to refund the proportionate amount of the lease money, for which period the leases have not been permitted to operate. This was objected to by the appellants. Thus, the Court crystallised the issue to be determined and the only aspect to be examined by this Court, as whether in view of judicial pronouncements the appropriate order to pass would be for refund of the lease amount for the period it was not permitted to operate, or whether the leases are liable to be renewed for the period of obstructed time. It is within the contours of the aforesaid proposition that the learned counsel for the parties have taken their stand, both in terms of the written synopses and by making submissions in the Court.

The stand of the State of U.P.

e 14. The State of U.P. crystallised the factual issue by setting out that the total number of permitted operational mining leases prior to the impugned order in the district in question were 82—64 leases in Village Billi Markundi and only 29 of such leases were covered by the impugned order². The impugned order resulted in 41 leases ceasing to exist/being banned and 29 leases out of them have been covered by Section 20 notification. The notification had resulted in 5 out of 29 leases falling within the radices of 100 m of the forest land and out of the remaining 24 leases, 12 have expired and 12 subsist. We are concerned with the latter. The consequence of the impugned order² and the order of the DM was that the mining operations had been obstructed pursuant to the impugned order dated 13-7-2018² till the issuance of the notification under Section 20 of the Forest Act. The State of U.P. contended that it had only complied with the impugned order and if these mining leases are now extended there would be consequences flowing to the State of U.P., on account of judicial orders. We may notice that some of the leases expired during the obstructed period while other leases have continued and thus in the latter cases the issue would only be to further extend the lease for the obstructed period while in case of the earlier situation permission would have to be given to mine for an extended

h 9a Framed under Section 15 of the Mines and Minerals (Development and Regulation) Act, 1957.

10 *Dharmendra Kumar Singh v. State of U.P.*, 2020 SCC OnLine SC 891

2 *All India Kalmur People's Front v. State of U.P.*, 2018 SCC OnLine NGT 1514

period relatable to the obstructed period. The delay on the part of the State of U.P. in issuance of the Section 20 notification has been placed at the door of an apprehension that it should not be construed as violative of the orders passed in *Banwasi Seva Ashram case*⁴. a

15. In what manner should such cases be dealt with, judicial opinions expressed in this behalf have been sought to be referred to as a consistent view of the Allahabad High Court in this behalf, being the local court dealing with the aspect of mining leases in the cases: b

15.1. In *Sukhan Singh v. State of U.P.*¹¹ an opinion was rendered that the mere filing of an application either for the grant of a lease or for the renewal of a lease does not confer a vested right for the grant or renewal of a lease and, an application has to be disposed of on the basis of the rules as they stand on the date of the disposal of the application. This was in the context of the applicability of G.O. dated 31-5-2012 to pending applications seeking a fresh lease or for renewal of a lease under Chapter II of the Mining Rules as decided in *Nar Narain Mishra v. State of U.P.*¹² (This view received the imprimatur of the Supreme Court in *Sulekhan Singh & Co. v. State of U.P.*¹³) c

15.2. In *Mohd. Yunus Hasan v. State of U.P.*¹⁴ Rule 68 of the Mining Rules dealing with the relaxation of applicability of the Mining Rules by the State Government was interpreted to determine the contours of the power which could be exercised in terms of the said Rule. Rule 68 reads as under: d

“68. Relaxation of rules in special cases.—The State Government may, if it is of opinion that in the interest of mineral development it is necessary so to do, by order in writing and for reasons to be recorded, authorise in any case the grant of any mining lease or the working of any mine for, the purpose of winning any minerals on terms and conditions different from those laid down in these Rules.” e

The aspect of “interests of mineral development” was emphasised and it was opined that the rule does not confer a power on the State to extend a lease beyond the contracted period without adhering to the procedure under Chapters II (Grant of mining lease) and IV (Auction lease) of the Mining Rules. The conclusion reached was that this Rule 68 could not be an aid to extend the term of an expired lease to compensate any loss caused to such leaseholder, if their lease has been terminated or curtailed during the subsistence period due to an order of the competent authority. Moreover, the right to an extension of lease must either flow from a statutory provision or from the terms of the lease between the parties concerned. f
g

⁴ *Banwasi Seva Ashram v. State of U.P.*, (1986) 4 SCC 753

¹¹ 2014 SCC OnLine All 14627 : (2015) 2 All LJ 619

¹² 2013 SCC OnLine All 13919

¹³ (2016) 4 SCC 663

¹⁴ 2016 SCC OnLine All 3535 : (2016) 4 All LJ 4 h

DHARMENDRA KUMAR SINGH v. STATE OF U.P. (*Sanjay Kishan Kaul, J.*) 107

15.3. In *Vijay Kumar Dwivedi v. State of U.P.*¹⁵ the validity of permission granted by the State Government to leaseholders to continue with the excavation for the period during which they were obstructed/restrained from carrying out such activities during the subsistence of their leases due to orders of the High Court or of the competent authorities was examined. Relying upon the observations in *Mohd. Yunus Hasan case*¹⁴, the Allahabad High Court directed that no person shall be permitted to excavate minor minerals on the basis of lease deeds or permission granted subsequent to G.O. dated 31-5-2012 under the garb of renewal of an expired lease, extension of lease, grant of a fresh lease, or permission to excavate during the obstructed period. Additionally, no Form MM-11 shall be issued in favour of any person with an expired lease or an order be granted subsequent to 31-5-2012 in their favour for excavation of minor minerals in the name of renewal of lease, extension of term of expired lease, or permission for the obstructed period on the plea that a valid lease was granted but excavation could not be carried for some days during the subsistence period due to orders of the High Court/competent authorities. This was so as the G.O. dated 31-5-2012 recorded a decision, which had been taken in the interests of transparency and fair competition, to grant leases through the e-tendering system by inviting tenders under Chapter IV of the Mining Rules.

16. In the conspectus of the aforesaid facts and judicial pronouncements, the developments which have taken place post this situation were set out. The State of U.P. issued a New Mining Policy on 12-6-2017. In terms of this policy there is no provision for grant of extension of time for obstructed period of mining lease and all mining leases were to be permitted by e-tendering or e-auction alone.

17. It is also contended before us on behalf of the State of U.P. by learned Senior Counsel, Mr V. Shekhar that there was no legal provision/rule or any provision in the respective lease deeds to pay damages in case of disruption of mining leases and the consequences of such disruption are set out in Rule 40(h) of the Mining Rules, which reads as under:

“40. Liberties, powers and privileges of the lessee.— * * *

(h) In the event of disruption of mining operation in the lease area owing to any special circumstances, the District Magistrate with the prior approval of the State Government shall adjust the amount equivalent to the instalment payable during the disrupted period, online against the forthcoming instalment.”

Thus, in the event of disruption of mining operations in the leased areas owing to any special circumstances, the DM, with the prior approval of the State Government shall adjust the amount equivalent to the instalment payable during the disrupted period against the forthcoming instalment. Thus, it was

¹⁵ 2016 SCC OnLine All 3548 : (2016) 4 All LJ 690

¹⁴ *Mohd. Yunus Hasan v. State of U.P.*, 2016 SCC OnLine All 3535 : (2016) 4 All LJ 4

contended that the State of U.P. is only liable to refund (i) any security deposit, or (ii) advance royalties paid to it.

18. It was emphasised that in view of the judicial pronouncement in *Vijay Kumar Dwivedi case*¹⁵ it is clear that after 31-5-2012, no permission for mining can be granted to excavate during the obstructed period. In the absence of any provision under the Mining Rules for grant of extension of expired mining lease or renewal of the same for the obstructed period in case of disruption to mining operation, any extension of lease was contended to be unsustainable in law.

19. The sequitur to G.O. dated 31-5-2012 was pleaded to have been explained in *Nar Narain Mishra case*¹² where the Allahabad High Court observed that any submission that “imarti patthar or building stone” is not covered by the G.O. dated 31-5-2012 cannot be accepted. This was predicated on the reasoning that the G.O. did not confine itself to the word “boulder” found in riverbeds as the same can be used for minerals found in riverbeds as well as those found in “in situ rock deposit”. This was also stated to be evident from Schedules I and II of the Mining Rules which make it clear that the word “boulder” is included in the heading of “building stone” as well as found in a mixed form in the riverbed. Item 5 of Schedule I and Item 4 of Schedule II both use the word “boulder” as building stones as well as when found in a mixed form in riverbeds.

20. The High Court, thus, passed directions rejecting the prayers made for consideration of applications for renewal of mining leases which were pending on 31-5-2012 and applications for grant of fresh leases under Chapter II of the Mining Rules which were also pending on the same day. An SLP preferred against this judgment¹² was dismissed on 4-3-2016¹⁶. Not only that, it was emphasised that the Supreme Court itself in *Sulekhan Singh case*¹³ approved of the decision in *Nar Narain Mishra case*¹².

21. The concluding argument was that the aforesaid position leaves no manner of doubt that the appellants were not entitled to any extension or renewal of their old leases and at the most are entitled to refund of their respective lease amounts for the period for which the leases were not permitted to operate, an aspect which has already been conceded on behalf of the State Government in the proceedings dated 10-8-2020. Thus, the permission sought by the appellants for operating the expired mining lease for the obstructed period was strongly opposed, leaving it for the appellants to file an application under Rule 40(h) if the amount is to be refunded or adjusted.

22. We may note the supporting arguments of AIKPF qua the impugned order of the NGT, which drew our attention to the prohibition of mining in ESZ declared around the Kaimur National Park and that not being challenged

15 *Vijay Kumar Dwivedi v. State of U.P.*, 2016 SCC OnLine All 3548 : (2016) 4 All LJ 690

12 *Nar Narain Mishra v. State of U.P.*, 2013 SCC OnLine All 13919

16 *Vilayati Ram Mittal v. State of U.P.*, 2016 SCC OnLine SC 1896

13 *Sulekhan Singh & Co. v. State of U.P.*, (2016) 4 SCC 663

a

b

c

d

e

f

g

h

DHARMENDRA KUMAR SINGH v. STATE OF U.P. (*Sanjay Kishan Kaul, J.*) 109

a by the appellants and hence the consequences of mining activity for the obstructed period did not facilitate extension of leases. The aspect arising from the G.O. dated 31-5-2012 and the contentions of the State Government in that behalf were also sought to be supported by the observations of the Supreme Court in *Deepak Kumar v. State of Haryana*¹⁷ which in turn had extracted the recommendations of the Ministry of Environment and Forest regarding the definition of the term “minor mineral”, which it said meant building stone, gravel, ordinary clay, ordinary sand other than sand used for prescribed purposes and any other material which the Central Government may, b by notification declare to be a minor mineral.^{17a}

The appellants’ case

c **23.** The contentions of the appellants, on the other hand, led by the learned Senior Counsel, Mr Mukul Rohatgi and Mr S.P. Singh are predicated on the settlement of the controversy in question in the aforementioned prior rounds of litigation which came up right to this Court and the appellants had succeeded in the same. The land for which mining leases were granted to the appellants were excluded from the purview of the Section 4 notification in pursuance of the settlement proceedings concluded as per the directions in *Banwasi Seva Ashram case*⁴. These settlement proceedings are pleaded to have been ignored while passing the impugned order and that too without notice to the appellants. d

e **24.** The appellants plead that suspension of the mining leases is not on account of any factor attributable to them i.e. there is no illegal mining or any such factor, which may weigh against the appellants. The delay in issuance of the Section 20 notification was solely because of the delayed State action, and the issue was finalised only on 15-6-2020 whereby the land categorised as revenue land was excluded from the purview of forest land. The appellants alleged to have suffered for no fault of theirs but on account of the litigation initiated behind their back and the inaction of the State. This was, it was contended, a “third chapter of litigation” on the very question of the consequences of Section 4 notification — the first round in pursuance of f *Banwasi Seva Ashram case*⁴ right up to this Court and then the exclusion claim of JAL which culminated in the order of the Tribunal dated 4-5-2016¹, which it was contended, would have no bearing on their leases.

g **25.** The plea of the State of non-grant of extension of leases is stated to be contrary to record as that power has been exercised in the past under Rule 68 of the Mining Rules. Illustratively, two judgments have been referred to where such extension of lease is recognised: *J.P. Yadav v. Kanhaiya Singh*¹⁸ and

17 (2012) 4 SCC 629

17a Section 3(e) of the Mines and Minerals (Development and Regulation) Act, 1957.

h 4 *Banwasi Seva Ashram v. State of U.P.*, (1986) 4 SCC 753

1 *T.N. Godavarman Thirumulpad v. Union of India*, 2016 SCC OnLine NGT 1187

18 (2021) 1 SCC 116

*Jagdish Prasad Nishad v. State of U.P.*¹⁹. In *J.P. Yadav*¹⁸, the Supreme Court observed that Rule 68 confers upon the State the powers to extend lease for the obstructed period and subsequently in *Jagdish Prasad Nishad*¹⁹, the High Court reiterated that any different view taken with respect to Rule 68 and the powers it confers on the State would be in violation of the observations of the Supreme Court in *J.P. Yadav*¹⁸. Rule 68, it was urged, is comprehensive and complete in all respects and in the absence of any specific legislation recourse can be had to the said Rule.

26. On a linked aspect, keeping in mind the predicament that the appellants find themselves in on account of Court orders, the learned counsel relied upon the observations in *Beg Raj Singh v. State of U.P.*²⁰ for the proposition that the ordinary rule is that the Court should try to place the successful party in the same position which they had been in, if the wrong complained against them would not have been done to them. Moreover, it was argued that, it is a well-settled proposition of law that an act of the Court shall prejudice no one and the same is reflected in the maxim, “*Actus curiae neminem gravabit*”. The factual matrix dealt with the same issue of extension of mining leases and in pursuance of the judgment, the State of U.P. had issued a Notification dated 31-7-2014 to all DMs stating that the judgment makes it clear that wherever no third-party interest had been created, the area is vacant and it is established that the leaseholder has been prevented from operating its mining lease for any period for no fault attributable to them, then the extension of mining lease for the corresponding period can be provided. The case of the appellants is submitted to squarely fall within the aforesaid compass.

27. The appellants plead that the G.O. dated 31-5-2012 and for that matter the New Mining Policy of 2017 will have no bearing as that aspect stands elucidated vis-à-vis the judgment in *Peethambra Granite (P) Ltd. v. State of U.P.*²¹ by the High Court of Judicature at Allahabad. In this case, the directions issued in *Vijay Kumar Dwivedi case*¹⁵ have been held to have no application to granite building stone (in situ rock) as the mineral was not covered by the G.O. dated 31-5-2012. This aspect is stated to have been clarified by the subsequent G.O. dated 26-2-2013 and the G.O. dated 22-10-2014, the latter, in fact, cancelled the G.O. dated 31-5-2012 as also the G.O. dated 26-2-2013. Since 31-5-2012 itself, a total of 35 mining leases are stated to have been granted or renewed in District Sonbhadra.

28. We may add that Mr Ranjit Kumar, learned Senior Counsel, advanced the additional plea of G.O. dated 31-5-2012 not being applicable on account of the lease being granted prior to that date in 2012.

19 2015 SCC OnLine All 7495 : (2015) 128 RD 150

18 *J.P. Yadav v. Kanhaiya Singh*, (2021) 1 SCC 116

20 (2003) 1 SCC 726

21 2020 SCC OnLine All 1399

15 *Vijay Kumar Dwivedi v. State of U.P.*, 2016 SCC OnLine All 3548 : (2016) 4 All LJ 690

a

b

c

d

e

f

g

h

DHARMENDRA KUMAR SINGH v. STATE OF U.P. (*Sanjay Kishan Kaul, J.*) 111

a **29.** On the aspect on which a court query was posed i.e. if this Court is not agreeable to renew the leases, what could be the method of grant of compensation, calculations have been filed by the appellants. Losses are stated to include idling of machinery and other infrastructure, the payment of salaries, providing staff accommodation as also the costs of litigation as part of calculation of compensation.

b **30.** We may note in the end that one of the pleas advanced was that the State Government itself had not been satisfied with the impugned order and had preferred Civil Appeals Nos. 8804-805 of 2019. However, when this fact was pointed out to Mr V. Shekhar, learned Senior Counsel, on instructions, sought to withdraw the appeal stating that whatever be the grievance against the impugned order, the same did not survive and that the State Government was not desirous of pursuing the appeal. The appeal was, thus, dismissed as
c withdrawn on 29-9-2020²² and the judgment was reserved in these appeals.

The path we take

31. We have given considerable thought to the issue at hand, keeping in mind the past litigation, the statutory provisions and the narrow compass in which we have to examine the issue at hand.

d **32.** There is no doubt that the prior rounds of litigation resulted in orders favouring the appellants. The present round of litigation, however, arose on account of an endeavour to prevent alleged illegal mining in the vicinity of the Kaimur Wildlife Sanctuary located in Village Billi Markundi in Sonbhadra District. The Notification dated 20-3-2017 of MoEFCC declared the “area in question” as an ESZ under the provisions of the EPA. The sequitur was that the
e State of U.P. placed before the NGT the factual position relating to the grant of leases and according to them, there were stated to be 33 leases operational outside the ESZ. The NGT wanted to examine this on account of the orders passed on 4-5-2016 in *T.N. Godavarman Thirumulpad*¹ case for cancellation of all mining leases and all other non-forestry activities on areas notified under
f Section 4 of the Forest Act. The whole object was to find out as to what lay outside of the reserved limit of the forest area and it was found that there were some active leases still in force on the lands which were covered under the notification issued under Section 4 of the Forest Act. But despite this, the notification under Section 20 of the Forest Act had not been issued. The directions which arose from the impugned order of the NGT on 13-7-2018²,
g were towards this objective.

33. We have already noted that the leaseholders were, however, not made parties, not even in a representative capacity. This is the reason that these aspects could not be examined with the assistance of the appellants by the NGT,

h ²² *State of U.P. v. All India Kalmur Peoples Front*, 2020 SCC OnLine SC 892

¹ *T.N. Godavarman Thirumulpad v. Union of India*, 2016 SCC OnLine NGT 1187

² *All India Kalmur People’s Front v. State of U.P.*, 2018 SCC OnLine NGT 1514

and the mining activity was stopped resulting in the appeals before us. We, thus, called upon the State of U.P. to perform their statutory duty of issuance of the Notification under Section 20 of the Forest Act and after some delay, the same was issued only on 15-6-2020. It is only at that stage that the leases which were not covered, as in the case of the appellants, had a final clarity and the issue, received a closure. However, this did prevent the mining activity till then, from the time it was banned by the NGT. In the meantime, there are leases which have expired and there are other leases which are still in force as is apparent from the detailed chart which we have set out at the inception of our judgment.

34. Insofar as the question whether to adopt the course of extending the leases for the obstructed period or in some way compensating the appellants for the same, is what was debated and we have already noted the rival contentions of the two parties.

35. We have, at the inception, stated that we are conscious of the statutory provisions and, thus, would not like to infringe the same, apart from the fact that it may not be an appropriate course of action as it may open other floodgates as if these rounds are not enough!

36. The judicial opinions referred to by the learned counsel for the State of U.P. no doubt lead to a more or less consistent view that a mere filing of an application either for the grant of a lease or for the renewal of a lease does not confer a vested right for either grant or renewal of a lease (*Sukhan Singh case*¹¹). The statutory provision of Rule 68 of the Mining Rules, which has been strongly relied upon by the learned counsel for the appellants, is in the nature of a relaxation rule in special cases and has to be read with the Rules which provide the manner in which the exploitation of minerals should take place (*Mohd. Yunus Hasan case*¹⁴). Thus, the expression used is “in the interest of mineral development it is necessary so to do...”. The idea, thus, is that the objective of exercising such power should be to aid the development of minerals and such judicial view is of significance as there was always a possibility of the misuse of such power, considering the history of mineral exploitation in our country. The statute was worded in a restrictive manner deliberately giving only a restricted window and this legislative intent ought not to be defeated by supplanting it with any other interpretation. It is a well-settled principle of interpretation that when the words of a statute are clear and unambiguous, recourse to different principles of interpretation, other than the rule of literal construction, cannot be resorted to.²³ If a fresh grant or extension has to be made under the Mining Rules, it must be in accordance with Chapter II, and the provision for auction of leases in Chapter IV is in furtherance of a transparent procedure.

11 *Sukhan Singh v. State of U.P.*, 2014 SCC OnLine All 14627 : (2015) 2 All LJ 619

14 *Mohd. Yunus Hasan v. State of U.P.*, 2016 SCC OnLine All 3535 : (2016) 4 All LJ 4

23 *DTC v. Balwan Singh*, (2019) 18 SCC 126

a

b

c

d

e

f

g

h

DHARMENDRA KUMAR SINGH v. STATE OF U.P. (*Sanjay Kishan Kaul, J.*) 113

37. We do find ourselves in agreement with the submission of the learned counsel for the State that the right to extension of lease either flows from a statutory provision or from the terms of the lease between the parties concerned. If there has been an obstructed period by reason of a judicial interdict, that itself will not give window to extend the lease by not following the statutory provisions, especially when the terms of the lease do not provide for any consequences thereof.

38. We may notice that this view has been adopted by the Allahabad High Court in *Vijay Kumar Dwivedi case*¹⁵ where the same question was examined. The leaseholders were obstructed/restrained from carrying out the mining activity during the subsistence of their leases upon the orders of the High Court or of the competent authority. The High Court adopted the view that after the issuance of the G.O. dated 31-5-2012 this could not be done.

39. We are conscious of the fact that the G.O. dated 31-5-2012 also finds elucidation in certain other judicial pronouncements and that this aspect was clarified by the subsequent G.O. dated 26-2-2013 and then both the G.Os. were cancelled vide G.O. dated 22-10-2014, which would hold the field. In pursuance thereof, 35 mining leases are stated to have been issued but that itself would not make a difference because we have to see what are the subsequent developments and what course to adopt as on date. Even if we consider the interpretation sought to be put forth by the learned Senior Counsel for the appellants of an expanded view of Rule 68, giving power to the State to extend the lease for the obstructed period, would it now be exercisable is the question.

40. The State of U.P. had issued a New Mining Policy on 12-6-2017 and this policy has no provision for grant of extension of time for obstructed period of mining lease and all mining leases were to be permitted by e-tendering or e-auction alone. If the mining lease is extended for the obstructed period, it would amount to violation of this New Mining Policy and since the extension would have to be granted now, we are unable to accept the contention of the learned Senior Counsel for the appellants that this should relate back to the date of the lease and not as on date.

41. We may also notice that the statutory rule, Rule 40(h) of the Mining Rules, extracted in para 17 itself, provides for the consequences of the disruption of mining operations in a lease area owing to any special circumstances and requires the DM, with the prior approval of the State Government, to adjust the amount equivalent to the instalments payable during the disrupted period against forthcoming instalments. Thus, monetary adjustment is all that has been provided for by the statute making the legislative intent obvious i.e. that if some amounts have been paid as instalments under the mining lease for the period when the beneficiary is not able to operate the mining area, only that amount is liable to be refunded. This is what forms the basis of the submission made on behalf of the State of U.P. that they are only

¹⁵ *Vijay Kumar Dwivedi v. State of U.P.*, 2016 SCC OnLine All 3548 : (2016) 4 All LJ 690

liable to refund (i) any security deposit; or (ii) advance royalties paid to them, for this obstructed period — something to which the State of U.P. has already consented before us as recorded in our order dated 10-8-2020. The view taken by the High Court in *Nar Narain Mishra case*¹² no doubt was in the context of the applicability of the G.O. dated 31-5-2012 and received the imprimatur of the Supreme Court in *Sulekhan Singh case*¹³. But we have also to note that the observations dealt with the issue also on the submission advanced that “imarti patthar or building stone” is not covered by the G.O. dated 31-5-2012 and that contention was not accepted. The word “boulder” was held to be included in the heading of “building stone” as well as when found in a mixed form in riverbeds and the prayer of the leaseholder was not accepted.

42. We are conscious of the fact, as already noticed, that the appellants have suffered in the second round and the plea advanced on their behalf that if there were interdicts posed by a competent court that should not put a party at a disadvantage. This rule is ordinarily to be accepted for placing a successful party in the same position, which they had been in, if the wrong complained against them would not have been done to them.²⁰ However, this cannot be a blanket proposition and we have to consider the context in which the interdict was passed i.e. to preserve the forest area. It is a different matter that some leases were ultimately found as within the restricted area and some outside (as is the case of the appellants). Even if we take the notification of the State of U.P. dated 31-7-2014 into account, and the authorisation of the DMs to extend the lease where no third-party interest was created and the leases were prevented from operation for no fault attributable to the leaseholders, the subsequent transparent Policy of 2017 would weigh in favour of not exercising the jurisdiction to extend the leases for the obstructed period.

43. We, thus, find that the appropriate course of action to be adopted in this case cannot be to extend the lease for the obstructed period but to direct that the security deposit, if not already refunded, should be refunded and the amount deposited by the appellants/leaseholders as advance royalties to the respondent State be also paid back to them along with something more.

44. We now come to that something more and we are taking recourse to that course of action by exercising our jurisdiction under Article 142 of the Constitution of India to do complete justice inter se the parties. We do this, keeping in mind that the appellants’ monies have remained blocked and mining prevented for no fault of theirs, despite success in earlier legal proceedings, and this aspect has to be balanced with the statutory provision or for that matter, even the contractual provisions not providing for extension of leases. We are, thus, of the view that since these monies have remained blocked, the monies should carry simple interest @ 9% p.a.

12 *Nar Narain Mishra v. State of U.P.*, 2013 SCC OnLine All 13919

13 *Sulekhan Singh & Co. v. State of U.P.*, (2016) 4 SCC 663

20 *Beg Raj Singh v. State of U.P.*, (2003) 1 SCC 726

DHARMENDRA KUMAR SINGH v. STATE OF U.P. (*Sanjay Kishan Kaul, J.*) 115

a **45.** Insofar as the security deposit is concerned, if it has already been refunded, it would naturally not carry any interest and if not, then it will carry interest from the date it ought to have been refunded after the expiry of the lease till it is actually refunded in case of expired leases. On the other hand, so far as the advance royalties for the obstructed period are concerned, the said amounts will carry interest @ 9% p.a. from the date the obstruction occurred i.e. 29-8-2018 and 5-2-2019, as applicable to the respective appellants, till the date of payment.

b **Conclusion**

46. The appeals are, thus, decided as aforesaid with the limited directions and to the extent the observations in the impugned order are in contradiction thereto are set aside. It is directed that the following amounts be refunded to the appellants:

c **46.1.** Security deposit, if not already refunded, with simple interest @ 9% p.a. from the date it ought to have been refunded after the expiry of the lease till it is now actually refunded, in case of expired leases.

d **46.2.** Advance royalties, if not already refunded, with simple interest @ 9% p.a. from the date of the obstruction occurred i.e. 29-8-2018 and 5-2-2019 as applicable to the respective appellants, till the date of payment.

46.3. Both the aforementioned amounts be refunded within two months from today.

47. The appeals are disposed of in terms aforesaid, leaving the parties to bear their own costs. All pending applications also stand disposed of.

e

f



g

// TRUE COPY //

h