V1Nod Kumar Shantilal Gosalia vs Gangadhar Narsingdas Agarwal & Ors on 26 August, 1981

Equivalent citations: 1981 AIR 1946, 1982 SCR (1) 392, AIR 1981 SUPREME COURT 1946, 1981 (4) SCC 226

Author: Y.V. Chandrachud

Bench: Y.V. Chandrachud, Syed Murtaza Fazalali, A.D. Koshal

PETITIONER:
V1NOD KUMAR SHANTILAL GOSALIA

Vs.

RESPONDENT:
GANGADHAR NARSINGDAS AGARWAL & ORS.

DATE OF JUDGMENT26/08/1981

BENCH:
CHANDRACHUD, Y.V. ((CJ)
BENCH:
CHANDRACHUD, Y.V. ((CJ)
FAZALALI, SYED MURTAZA
KOSHAL, A.D.

CITATION:
1981 AIR 1946 1982 SCR (1) 392
1981 SCC (4) 226 1981 SCALE (3)1459

ACT:
Goa, Daman and Diu Administration Act, 1962 (1 of 1962) S. 5(i); Goa, Daman and Diu (Laws) Regulation 1962 (12 of 1962) S. 2(a), 3(1) and 4(2); Mines and Mineral (Regulation and Development) Act, 1957, S. 4 and Mineral Concession Rules 1960, Rule 38-Scope of.

Mining rights in Goa, Daman and Diu-Title of manifest obtained from Portuguese Colonial Government-Purchased from Manifestor-Application for mining concession made-Application pending consideration-Acquisition of Goa by India-Rights accrued under Portuguese law whether survive-Whether can be enforced against the new Government.

Words and Phrases-'Legal Proceedings-Meaning of-Goa, Daman and Diu (Law) Regulation 1962, S. 4(i).

HEADNOTE:

Matters relating to grant, transfer and vesting of mining rights in Goa, Daman and Diu during the Portuguese rule, were government by the "Portuguese Colonial Mining Laws". Under those laws a person could, make a declaration" in writing stating that "he has discovered a mineral deposit". Such a declaration was called a "Mining Manifest ' and the person making the declaration was called a "Manifestor". The object of making a Mining Manifest was to acquire mining rights from the Government in respect of the area covered by the Manifest. On verification, the concerned authorities would prepare a "Notice of Manifest". The Notice of Manifest was an acknowledgment by public authorities of the authenticity of the Mining Manifest and it was a step-in-aid to the grant of mining rights. The Notice of Manifest was followed by the grant of "Title of Manifest", "a certificate in terms of the note of manifest pertaining to the legal right to concession, and entitled the manifestor to a "Mining Concession" under which he was permitted "to explore a mining property and to enjoy thereon all mining rights". The mining concession was 'unlimited in duration as long as the concessionaire complied with the conditions which the law and title of concession imposed on him".

Article 119 of the Portuguese Colonial Mining Laws provided that a "prospecting license" was not transferable but by article 120, a Title of Manifest was transferable by simple endorsement on the original title, duly executed in terms of Article 60.

The territories comprised in Goa, Daman and Diu under the Portuguese rule were annexed by the Government of India by conquest on December 20,

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1961. These territories became a part of India, and for the purpose of making A provision for their administration, the President of India, promulgated on March 5, 1962 the Goa, Daman and Diu (Administration) ordinance. On March 27, 1962 the Indian Parliament enacted the Goa, Daman and Diu (Administration) Act 1 of 1962 replacing the aforesaid ordinance with effect from March 5, 1962. On the same date, Parliament enacted the Constitution (Twelfth Amendment) Act, 1962 whereby Goa, Daman and Diu were added as Entry S in Part II of the First Schedule to the Constitution, and as clause (d) in Article 240 of the Constitution, with retrospective effect from December 20, 1961. Goa, Daman and Diu thus became a part of the Union Territories of India with effect from the date of their annexation by conquest.

On November 28, 1962 the President promulgated the Goa, Daman and Diu (Laws) Regulation No. 12 of 1962. The various Acts specified in the Schedule to the Regulation were extended to Goa, Daman and Diu, one of such Acts being the Mines and Minerals (Regulation and Development) Act, 1957. Section 4 of the Regulation provided or the repeal and saving of laws. By a notification issued by the Lt. Governor

of Goa, Daman and Diu under section 3 of the Regulation, the Mines and Minerals (Regulation and Development) Act, 1957 and the Mineral Concession Rules, 1960, were made applicable to Goa, Daman and Diu with effect from October 1, 1963.

On September 5, 1958 one "K" obtained four Titles of Manifest from the Portuguese Government, and sold those Manifests to Respondent No. I sometime in 1959. The sale was in conformity with the Portuguese Laws and was duly attested by a Notary Public in Goa. On September 4, 1959, Respondent No. I made four applications, one in respect of each Manifest, to the Governor General of Portugal, for demarcation of the area in respect of which the mineral concession was sought. On September 17, 1959 Respondent No I presented four applications attaching to them certain other documents and on September 24, 1959 he paid the balance of the fee prescribed for the grant of mineral concessions.

On the date on which the Act was extended to Goa, Daman and Diu, the applications made by respondent 1 on September 4 and 17, 1959 to the Governor General of Portuguese Goa were pending consideration for the grant of mineral concessions. Similar applications filed by other persons were also pending on that date. On September 16, 1964, the Mining Engineer, Department of Mines, Goa, informed respondent 1 that since his applications for mineral concessions had not been granted prior to October 1, 1963 when the Rules came into force, the said applications were deemed to have lapsed. He was however asked to submit fresh applications for grant of mineral concessions which would be considered on merits. On October S, 1964 the Secretary of the Goa Mineral ore Exporters Association made a representation to the Government, requesting that all cases in which applications were made and mineral concession fees were paid prior to October 1, 1963 should be treated by the Government sympathetically and mineral concessions granted.

On October 17, 1964 the appellant applied for a prospecting licence in respect of a large area, which included the four areas for which respondent 1 had
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applied for a mining concession during the Portuguese rule. In September 1965, the Government of Goa, decided to grant a prospecting licence to the appellant in respect of the whole area for which he had applied and sought approval of the Central Government under section 5(2) of the Act. As the application, was not granted within the time limit prescribed by the Rules, it was deemed to have been rejected. However, the Central Government on February 10, 1966 acting under S. 30 of the Act restored the application of the appellant and made a recommendation to the State Government that a prospecting licence should be granted to him in respect of certain area which included the area for which respondent 1 had applied to the Portuguese Government in September 1959. In pursuance of the Central Government's recommendation, the State Government granted to the

appellant a prospecting licence on February 26, 1966.

On August 16, 1966 respondent 1 made four applications for mining Leases in respect of the very same area for which he had applied for mineral concessions during the Portuguese rule and in respect of which the Government of Goa had, granted a prospecting licence to the appellant on February 26, 1966.

The appellant applied for mining lease on May 8, 1967. The State Government having delayed the grant to the appellant, he filed a revision application under rule 54 of the Rules against the deemed refusal of his application. On April 20, 1969 the revision application was allowed by the Central Government which directed the State Government to grant a mining lease to the appellant in respect of a smaller area. This area covered the area in respect of which respondent 1 was agitating his right to obtain a mining lease.

In between, upon the rejection of his revision application by the Central Government in September 1967, respondent I filed a writ petition challenging the orders of the Government refusing to grant a mining lease to him in respect of the four areas for which he had applied on August 16, 1966, contending that by virtue of the four titles of manifest duly transferred in his favour he had acquired an indefeasible right to obtain concessions over the said area even prior to the annexation of Goa, that he had presented applications and paid the necessary fees prior to the annexation, and that therefore, the right which had accrued in his favour could not be considered as having lapsed on the annexation.

The High Court allowed the writ petition and quashed the orders dated September 16, 1964, September 18, 1967 and September 29, 1967 whereby respondent 1's applications for mining leases and his revision applications were rejected by the Government. The High Court also quashed the order dated February 26, 1966 whereby a prospecting licence was granted to the appellant and directed the State Government to treat the applications of respondent I dated September 4 and September 17, 1959 as still subsisting and to dispose them of.

In the appeal to this Court, it was contended on behalf of the appellant, that there was an interregnum between December 20, 1961 when the Government of India annexed Goa, and March 5, 1962 when the Administration Act was brought into force, as a result of which, laws which were in force in Portuguese

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Goa immediately before the annexation of Goa ceased to apply to that territory with effect from December 20, 1961 until March S, 1962. By section 5(1) of the Administration Act, it was only with effect from March S, 1962 that such laws continued in force in the annexed territory. Since respondent 1 had made his applications for mining leases or

mining concessions under the Portuguese law and since that law itself ceased to apply to the conquered territory with effect from the date of conquest, the applications lapsed on that date. The "Titles of Manifest" obtained by respondent I under those laws conferred upon him no vested right to obtain the mineral concessions or mining leases. They only enabled him to apply for concessions, since the Title of Manifest under the Portuguese law was no more than what a prospecting licence is under the Indian law of mining.

On behalf of respondent I it was contended that by virtue of the four Titles of Manifest which were duly transferred in his favour he had acquired the right to obtain mineral concessions in respect of the four areas prior to the annexation of Goa. He had presented the necessary applications within the prescribed period and he had also paid the necessary fees for obtaining mineral concessions. Since he was entitled to obtain mineral concessions or mining leases from the Portuguese Government, he would be entitled to obtain such concessions or leases from the Government of Goa also. Though, on the extension of the Act and the Rules to Goa with effect from October I, 1963, the Portuguese mining laws stood repealed by reason of section 4(1) of the Regulation the previous operation of the Portuguese mining laws so repealed was saved by reason of section 4(2) of the Regulation. Sub-section (2) also saved anything duly done or suffered under the Portuguese laws, as also the right, privilege, obligation or liability acquired, accrued or incurred under those laws. The applications filed by respondent I for the grant of mining concessions were "legal proceedings" within the meaning of section 4(2) of the Regulation. Since those proceedings were instituted in accordance with the Portuguese mining laws on the basis of the right possessed by respondent I to obtain mining concessions, he was entitled to continue the proceedings as if the Regulation had not been passed, that is, to say as if the Portuguese mining laws continued to be in force in the conquered territory of Goa.

Allowing the appeal,

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HELD: 1. The applications for mineral concessions made by respondent 1 on the basis of Title Manifests of 1959 had lapsed. Even assuming that those applications were pending when the Act and the Rules were extended to Goa on October 1,1963, respondent 1's applications could only be decided in conformity with the Act and the Rules. Section 4 of the Act and rule 38 of the Rules support this view. Section 21 of the Act makes it penal to do any prospecting or mining operation otherwise than in accordance with the Act or the Rules. The Act and the Rules having been made applicable to the territory of Goa on October 1,1963, and the supposedly pending applications of respondent I not having been granted within a period of nine months, they must be deemed to have been refused under rule 24(3) of the Rules. [416 C-E]

2. Incases of acquisition of a territory by conquest, rights which had accrued under the old laws do not survive and cannot be enforced against the
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new Government unless it chooses to recognise those rights. In order to recognise the old rights, it is not necessary for the new Government to continue the old laws under which those rights had accrued because, old rights can be recognised without continuing the old laws as, for example. by contract or executive action. On the other hand, the mere continuance of old laws does not imply the recognition of old rights which had accrued under those laws. Something more than the continuance of old laws is necessary in order to support the claim that old rights have been recognised by the new Government. That 'something more' can be found in a statutory provision whereby rights which had already accrued under the old laws are saved. In so far as the continuance of old laws is concerned, as a general rule, they continue in operation after the conquest, which means that the new Government is at liberty not to adopt them at all or to adopt them without a break in their continuity or else to adopt them from a date subsequent to the date of conquest. [413 D-F]

In the instant case there was an interregnum between December 20, 1961 and March 5, 1962. During that period the old laws of the Portuguese regime were not in operation in the conquered territory of Goa. Secondly the rights recognised under sub-section 2 ofsection 4 the Regulation did not extend any protection to the rights which had accrued prior December 20, 1961 but envisaged only such rights which had come into being after March 5, 1962 by reason of the laws continued by the Act and the Regulation. Apart from that, the Government of India never recognised either during the interregnum or thereafter, any rights on the basis of titles of manifest obtained by any person during the Portuguese rule. On September 16, 1964 the Government of India issued an order stating expressly that all applications for mineral concessions made to the Portuguese Government on the basis of titles of manifest shall be deemed to have lapsed. Thus, far from there being any recognition by the Indian Government of rights accruing from titles of manifest there is a clear indication that it decided not to recognise those rights. For two years after the order of the Government of India dated September 16, 1961, Respondent 1 did not take any steps at all for the recognition or reassertion of his rights. He had obtained an order of refund of the amount which he had paid to the Portuguese Government. It was on August 16, 1966 that he applied for a mining lease under the Indian Law. He did so after the appellant had obtained a mining lease in his favour on February 26, 1966 and he applied for a lease in respect of the very same areas over which the appellant was granted a mining lease. On September 20, 1967 the Central

Government rejected the application of respondent 1 for a mining lease and it is eleven months thereafter that he filed a writ petition challenging the various orders passed against him and the order by which a mining lease was granted to the appellant. No right had accrued in favour of respondent I under the Portuguese law and correspondingly, no liability or obligation was incurred by the Portuguese Government which the Government of India would be under a compulsion to accept by reason of the provisions contained in section 4 of the Regulation. [413 H-414 A]

Pema Chibar v. Union of India, [1966] I SCR 357, applied.

J. Fernandes and Co. v. The Deputy Chief Controller of Imports and Exports and ors. [1975] 1 SCR 867, 876, referred to.

JUDGMENT:

CIVIL APPELLATE JURISDICTION : Civil Appeals Nos. 1440- 1443 (N) of 1970.

From the judgment and order dated the 20th February, 1970 A of the Delhi High Court in Civil Writs Nos. 712, 712 A, 712 & 712-C of 1968.

S. N. Kackar, Santosh Chatterjee, A. K. Panda, R. C. Parija and G. S. Chatterjee for the appellant.

G. L. Sanghi, Vinod Bobde, B. R. Agarwal, P. G. Gokhale and Miss Vasudha Sanghi for Respondent No. 1.

M. M. Abdul Khader, Shobha Dikshit and M. N. Shroff for Respondents Nos. 2 & 3.

The Judgment of the Court was delivered by C CHANDRACHUD, C. J.: These appeals are by certificates granted by the Delhi High Court under Article 133 (1) (a) and (c) of the Constitution in regard to its judgment dated February 20, 1970 in C. W. No. 712 of 1968 The dispute in these appeals relates to the grant of mining rights in respect of an area situated in the villages of Karanzol and Sonaulim in Goa, the rival claimants being the appellant and Respondent 1. Respondent I claims preference over the appellant by reason of certain events which happened prior to the conquest and annexation of Goa by the Government of India on December 20, 1961. Before we turn to those events, it would be useful to notice the relevant provisions of the Mining Laws which were in force in Portuguese Goa.

During the Portuguese rule, matters relating to grant, transfer and vesting of mining rights in Goa, Daman and Diu were governed by the "Portuguese Colonial Mining Laws". Under those laws a person could, in stated circumstances, make a "declaration" in writing stating that "he has discovered a mineral deposit". Such a declaration was called a "Mining Manifest" and the person making the declaration was called a "Manifestor". The object of making a Mining Manifest was to

acquire mining rights from the Government in respect of the area covered by the manifest. On verification of the facts stated in the Manifest, the concerned authorities would prepare a "Notice of Manifest", by which was meant "the record in a special book of prospector's declaration, which in a fixed term will ensure the exclusive right to 'concession' of a manifested mining property when such property contains minerals and the manifested land is free". The Notice of Manifest was thus an acknowledgment by public authorities of the authenticity of the Mining Manifest. It was a step-in-aid to the grant of mining rights, since the particular entry in the special book maintained for keeping the record of mining manifests ensured the exclusive right of the manifestor to mineral concession or rights. The Notice of Manifest was followed by the grant of "Title of Manifest" which meant "a certificate in terms of the note of manifest, pertaining to the legal right to concession". The Title of Manifest entitled the manifestor to a 'Mining Concession' under which he was permitted "to explore a mining property and to enjoy thereon all mining rights". The mining concession was "unlimited in duration as long as the concessionaire complied with the conditions which the law and title of concession imposed on him". Article 119 of the Portuguese Colonial Mining Laws provided that a 'prospecting license', was not transferable but by article 120, a Title of Manifest was transferable by simple endorsement on the original title, duly executed in terms of Article 60.

On September 5, 1958 one V. J. Keny of Goa had obtained four Titles of Manifest from the Portuguese Government, being Manifests Nos. 31, 33, 34 and 35 of 1958, in respect of an area admeasuring about 400 Hectares. Some time in 1959, Keny sold those Manifests to Respondent I for Rs. 33,000/-. The sale was in a conformity with the Portuguese laws and was duly attested by a Notary Public in Goa. On September 4, 1959, which was one day before the expiry of a period of one year from the date on which Keny had obtained the Titles of Manifest from the Portuguese Government, Respondent i made four applications, one in respect of each Manifest, to the Governor General of Portugal, attaching with each application the relative Title of Manifest, a challan evidencing payment of the prescribed fee for the grant of mineral concession and a challan evidencing deposit of the prescribed mileage fee for demarcation of the area in respect of which the mineral concession was sought. On September 17, 1959 Respondent I presented four applications attaching to them certain other documents and on September 24, 1959 he paid the balance of the fee prescribed for the grant of mineral concessions.

The territories comprised in Goa, Daman and Diu under the Portuguese rule were annexed by the Government of India by conquest on December 20, 1961. By virtue of Article I (3)

(c) of the Constitution of India, these territories became a part of India. For the purpose of making provision for the administration of the said A territories, the President of India, in exercise of the powers conferred upon him by Article 123 (1) of the Constitution, promulgated on March 5, 1962 ordinance No. 2 of 1962, called the Goa, Daman and Diu (Administration) ordinance. On March 27, 1962 the Indian Parliament enacted the Goa, Daman and Diu (Administration) Act, 1 of 1962, replacing the aforesaid ordinance with effect from March 5, 1962. On the same date, the Parliament enacted the Constitution (Twelfth Amendment) Act, 1962 whereby Goa, Daman and Diu were added as Entry 5 in Part II of the First Schedule to the Constitution, and as clause (d) in Article 240 of the Constitution, with retrospective effect from December 20, 1961. Thus, Goa, Daman and Diu became a part of the Union Territories of India with effect from the date of their annexation by conquest.

On November 28, 1962 the President, in exercise of the powers conferred by Article 240 of the Constitution, promulgated the Goa, Daman and Diu (Laws) Regulation No. 12 of 1962. The various Acts specified in the Schedule to the Regulation were extended to Goa, Daman and Diu one of such Acts being the Mines and Minerals (Regulation and Development) Act, 1957. Section 4 of the Regulation provided for the repeal and saving of laws. By a notification issued by the Lt. Governor of Goa, Daman and Diu under section 3 of the Regulation, the Mines and Minerals (Regulation and Development) Act, 1957, and the Mineral Concession Rules, 1960, were made applicable to Goa, Daman and Diu with effect from October 1, 1963. We will refer to these as "The Act"

and "The Rules" respectively.

On the date on which the Act was extended to Goa, Daman and Diu, the applications made by respondent 1 on September 4 and 17, 1959 to the Governor-General of Portuguese Goa were pending consideration for the grant of mineral concessions. Similar applications filed by other persons were also pending on that date. On September 16, 1964, the Mining Engineer, Department of Mines, Goa, informed respondent 1 that since his applications for mineral concessions had not been granted prior to October 1, 1963 when the Rules came into force, the said applications were deemed to have lapsed. Respondent 1 was asked, if he so desired, to submit fresh applications for grant of mineral concessions in accordance with the provisions of the Act and the Rules which, it was stated, would be considered on merits. It was added that the Government held forth no assurance that the concessions would be granted. Similar communications were sent by the Department of Mines to 55 other persons whose applications were pending before the Portuguese Government when the Act and the Rules came into force. On October 5, 1964, the Secretary of the Goa Mineral ore Exporters Association made a representation to the Secretary, Industries and Labour Department, Government of Goa, Daman and Diu, requesting that all cases in which applications were made and mineral concession fees were paid prior to October 1, 1963, should be treated by the Government sympathetically and mineral concessions should be granted.

On October 17, 1964 the appellant applied to the Government of Goa for a prospecting licence in respect of a total area of 2600 hectares, which included the four areas for which respondent I had applied for a mining concession during the Portuguese rule. In September 1965, the Government of Goa decided to grant a prospecting licence to the appellant in respect of the whole area for which he had applied and sought approval of the Central Government to its proposed action, under section S(2) of the Act. Since appellant's application was not granted within the time prescribed by the Rules, it was deemed to have been rejected. But on February 10, 1966 the Central Government, acting under section 30 of the Act, restored the application of the appellant suo motu and made a recommendation to the Government of Goa that a prospecting licence should be granted to him in respect of an area of 2425 hectares, which included the area in respect of which respondent I had applied for a mineral concession to the Portuguese Government in September

1959. In pursuance of the Central Government's recommendation, the Government of Goa granted to the appellant a prospecting licence on February 26, 1966 over an area admeasuring 2425 hectares.

On August 16, 1966 respondent 1 made four applications for mining leases in respect of the very same area for which he had applied for mineral concessions during the Portuguese rule and in respect of which the Government of Goa had, as stated above, granted a prospecting licence to the appellant on February 26, 1966. Those applications having been rejected by the Government of Goa on September 29, 1966, respondent 1 filed revision applications to the Central Government which were also rejected in September 1967.

In pursuance of the prospecting licence granted to him on A February 26, 1966, the appellant applied for a mining lease on May 8, 1967. The State Government having delayed the grant of a mining lease to the appellant, he filed a revision application to the Central Government under rule 54 of the Rules against the deemed refusal of his application. On April 20, 1969, the revision application was allowed by the Central Government which directed the State Government to grant a mining lease to the appellant in respect of an area of 918.6050 hectares. This area covers the areas in respect of which respondent 1 was agitating his right to obtain a mining lease ever since the Portuguese rule.

In between, upon the rejection of his revision application by the Central Government in September 1967, respondent 1 had filed a Writ Petition (C.W. No. 712 of 1968) in the Delhi High Court on July 23, 1968 challenging the orders of the Government refusing to grant a mining lease to him in respect of the four areas for which he had applied on August 16, 1966. It was contended in the High Court on behalf of respondent 1 that by virtue of the four titles of manifest duly transferred in his favour, he had acquired an indefeasible right to obtain concessions over the four areas in question even prior to the annexation of Goa, that he had presented applications and paid the necessary fees prior to the said annexation and that therefore, the right which had accrued in his favour could not be considered as having lapsed on the annexation of Goa by the Government of India. It was stated on behalf of respondent 1 that it was out of abundant caution that he made fresh applications for mining leases to the Government of Goa after the annexation of Goa. These contentions were refuted on behalf of the appellant on the ground that the applications filed by respondent 1 to the Portuguese Government had lapsed on the annexation of Goa by the Government of India, that no right had accrued in favour of respondent 1 which the Government of Goa, after the annexation of Goa, was under an obligation to recognise and that since the appellant's application for a mining lease was granted, respondent 1 had no right to ask for a lease in respect of the areas which were included in the appellant's lease. The High Court allowed respondent 1's Writ Petition and quashed the orders dated September 16, 1964, September 18, 1967 and September 29, 1967 whereby respondent 1's applications for mining leases and his

revision applications were rejected by the Government. The High Court also quashed the order dated February 26, 1966 whereby a prospecting licence was granted to the appellant and directed the Government of Goa to treat the applications of respondent 1 dated September 4 and September 17, 1959 as still subsisting and to dispose them of in accordance with the findings and observations contained in the judgment. The correctness of the High Court's judgment is questioned in these appeals.

The main question which arises for consideration in these appeals is whether, prior to the annexation of Goa by the Government of India, respondent 1 had acquired the right to obtain a mining lease from the Portuguese Government and, if so, whether after the annexation of Goa, the Government of India recognised that right and is therefore bound to grant a mining lease to respondent 1 in terms of the applications made by him in that behalf to the Portuguese Government. The question of recognition of respondent 1's right by the Government of India will, of course, depend initially upon whether, as a matter of fact, he had acquired the right to obtain a mining lease from the Portuguese Government, which in turn will depend upon the provisions of the Portuguese mining laws. The question as to whether the Govt. of India is bound to grant a mining lease to respondent 1 will depend upon the effect of the laws passed by the Indian legislature after the annexation of Goa, in the matter of continuance of laws which were in force in Portuguese Goa and in the matter of protection of the rights arising under those laws. It, therefore, becomes necessary to notice the relevant provisions of The Goa, Daman and Diu (Administration) Act, 1 of 1962, and of the Goa, Daman And Diu (Laws) Regulation, 12 of 1962, to which we will refer respectively as "The Administration Act" and "The Regulation".

The Administration Act replaced ordinance No. 2 of 1962, which had come into force on March 5, 1962. The Administration Act, though passed on March 27, 1962, was given retrospective effect from the date of the ordinance, namely, March 5, 1962. The Administration Act makes provisions relating to appointment of officers, continuance of existing laws until amended or repealed, extension of enactments in force to Goa, Daman and Diu and for allied matters. Section 2(b) of the Administration Act provides that "appointed day" means the 20th of December 1961. That is the date on which the territories comprised in Goa, Daman and Diu under the Portuguese rule were annexed by the Government of India by conquest. Section 5(1) of the Administration Act reads thus:

"Continuance of existing laws and their adaptation,- (1) All laws in force immediately before the appointed day in Goa. Daman and Diu or and part thereof shall continue to be in force therein until amended or repealed by a competent Legislature or other competent authority."

The object of passing the Regulation was to extend certain laws to the Union Territory of Goa, Daman and Diu. Section 2(a) of the Regulation defines the "Act" to mean an act or the ordinance specified in the Schedule to the Regulation. Section 3(1) of the Regulation provides that the acts, as they are generally in force in the territories to which they extend, shall extend to Goa, Daman and Diu, subject to the modifications, if any, specified to the Schedule. Sub-section (2) of section 3 provides that the provisions of the acts referred in sub-section (1) shall come into force in Goa, Daman and Diu on such date as the Lieutenant-Governor may, by notification, appoint. Section 4 of the Regulation, which bears directly on the point at issue, reads thus:

"4. Repeal and saving-(1) Any law in force in Goa, Daman and Diu or any area thereof corresponding to any Act referred to in section 3 or any part thereof shall stand repealed as from the coming into force of such Act or part in Goa, Daman and Diu or such area, as the case may be.

(2) Nothing in sub-section (1) shall affect

(a) the previous operation of any law so repealed or anything duly done or suffered thereunder; or

(b) any right, privilege, obligation or liability acquired, accrued or incurred under any law so revealed: or

(c) any penalty, forfeiture or punishment incurred in respect of any offence committed against any law so repealed; or

(d) any investigation, legal proceeding or remedy in respect of any such right, privilege, obligation, liability, penalty, forfeiture o} punishment as aforesaid, and any such investigation, legal proceeding or remedy may be instituted, continued or enforced and any such penalty, forfeiture or punishment may be imposed as if this Regulation had not been made:

Provided that any thing done or any action taken (including any appointment or delegation made, notification, instruction or direction issued, form, bye-law or scheme framed, certificate obtained, patent, permit or licence granted, or registration effected) under any such law, shall be deemed to have been done or taken under the corresponding provision of the Act extended to Goa, Daman and Diu and shall continue to be in force accordingly unless and until superseded by anything done or any action taken under the said Act."

Shri Kacker, who appears on behalf of the appellant, contends that there was an interregnum between December 20, 1961, when the Government of India annexed Goa, and March 5, 1962 when the Administration Act was brought into force, as a result of which, laws which were in force in Portuguese Goa immediately before the annexation of Goa cease to apply to that territory with effect from December 20, 1961 until March 5, 1962. It is urged by counsel that by reason of section 5(1) of the Administration Act, it is only with effect from March 5, 1962 that such laws continued in force in the annexed territory. Since respondent 1 had made his applications for mining leases or mining concessions under the Portuguese law and since that law itself ceased to apply to the conquered territory with effect from the date of conquest, the applications lapsed on that date. Respondent 1, not having made any application after March 5, 1962 under the Portuguese mining laws, forfeited his right to ask for mining leases on the basis of those laws. According to Shri Kacker, not only did the applications made by respondent 1 prior to the annexation of Goa cease to have existence on December 20, 1961, but the Manifests of Title which were granted to respondent 1 under the previous mining laws, which might have formed the basis for applying for mineral concessions

under the same laws, also came to a termination. This, according to counsel, was much more so with effect from October 1, 1963, on which date the Mines and Minerals (Regulation and Development) Act, 1957, and the Mineral Concessions Rules, 1960 were extended to Goa. In regard to the nature of the right which respondent 1 claimed under the Portuguese law, it is argued by Shri Kacker that the "Titles of Manifest" obtained by respondent 1 under those laws conferred upon him no vested right to obtain the mineral concessions or mining leases. They only enabled him to apply for concessions, since the Title of Manifest under the Portuguese law was no more than what a prospecting licence is under the Indian law of mining.

The argument of Shri G. L. Sanghi in answer to the points made by Shri Kacker runs thus: By virtue of the four Titles of Manifest which were duly transferred in his favour, respondent 1 acquired the right to obtain mineral concessions in respect of the four areas, prior to the annexation of Goa. He had presented the necessary applications within the prescribed period and he had also paid the necessary fees for obtaining mineral concessions. Since respondent I was entitled to obtain mineral concessions or mining leases from the Portuguese Government, he would be entitled to obtain such concessions or leases from the Government of Goa also. Though, on the extension of the Act and the Rules to Goa with effect from October 1, 1963, the Portuguese mining laws stood repealed by reason of section 4(1) of the Regulation, the previous operation of the Portuguese mining laws so repealed was saved by reason of section 4(2) of the Regulation. Sub-section (2) also saved anything duly done or suffered under the Portuguese laws, as also the right, privilege, obligation or liability acquired, accrued or incurred under those laws. Not only that, but sub-section (2) also preserved any investigation, legal proceeding or remedy in respect of any such right, privilege, obligation or liability, which could be instituted, continued or enforced as if the Regulation had not been passed. The applications filed by respondent I for the grant of mining concessions were "legal proceedings"

> within the meaning of section 4(2) of the Regulation. Since those proceedings were instituted in accordance with the Portuguese mining laws on the basis of the right possessed by respondent 1 to obtain mining concessions, he was entitled to continue the proceedings as if the Regulations had not been passed, that is to say, as if the Portuguese mining laws continued to be in force in the conquered territory of Goa.
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> Before considering the merits of the respective contentions bearing on the effect of the provisions of the Administration Act and the Regulation, it is necessary to reiterate a well-settled legal position that when a new territory is acquired in any manner-be it by conquest, annexation or cession following upon a treaty-the new "sovereign" is not bound by the rights which the residents of the conquered territory had against their sovereign or by the obligations of the old sovereign towards his subjects. The rights of the residents of a territory against their state or sovereign come to an end with the conquest, annexation or cession of that territory and do not pass on to the new environment. The inhabitants of the acquired territory bring with them no rights which they can enforce against the new state of which they become inhabitants. The new state is not required, by any positive assertion or declaration, to repudiate its obligation by disowning such rights. The new state may recognise the old rights by re-granting them which, in the majority of cases, would be a matter of

contract or of executive action; or, alternatively, the recognition of old rights may be made by an appropriate statutory provision whereby rights which were in force immediately before an appointed date are saved. Whether the new state has accepted new obligations by recognising old rights, is a question of fact depending upon whether one or the other course has been adopted by it. And, whether it is alleged that old rights are saved by a statutory provision, it becomes necessary to determine the kind of rights which are saved and the extent to which they are saved.

In Vajesingji Joravarsingji v. Secretary of State, Lord Dunedin said in an oft-cited passage:

"...when a territory is acquired by a sovereign state for the first time that is an act of state. It matters not how the acquisition has been brought about. It may be by conquest, it may be by cession following on treaty, it may be by occupation of territory hitherto unoccupied by a recognised ruler. In all cases the result is the same. Any inhabitant of the territory can make good in the municipal Courts established by the new sovereign only such rights as that sovereign has, through his officers, recognised. Such rights as he had under the rule of predecessors avail him nothing..."

The decision of the Privy Council in Vajesingji (supra) and the decisions in similar other cases like Secretary of State v. Sardar Rustam Khan were followed by this Court in Dalmia Dadri Cement Co. Ltd. v. C.l.T., State of Saurashtra v. Memon Haji Ismail Haji, Jagannath Agarwala v. State of Orissa, State of Saurashtra v. Jamadar Mohamad Abdulla, Promod Chandra v. State of Orissa and Pema Chibar v. Union of India. A discordant note was struck by Bose J. who spoke for the Court in Virendra Singh v. The State of Uttar Pradesh, but a 7-Judge Bench held by a majority, Subba Rao J. dissenting, in Stale of Gujarat v. Vora Fiddali that Virendra Singh's case (supra) was decided wrongly. Five considered judgments were delivered in that case, four of which, on behalf of six learned Judges, affirmed the view of the Privy Council. Mudholkar J. who delivered a separate judgment concurring with the majority on the point at issue before us, said:

The rule of international law on which the several Privy Council decisions as to the effect of conquest or cession on the private rights of the inhabitants of the conquered or ceded territory are founded has become a part of the common law of this country. (page 5 90). We must accordingly proceed on the basis that the right, if any, which respondent 1 had against the Portuguese Government to obtain a mineral concession or a mining lease came to an end with the conquest of Goa by the Government of India on December 20, 1961. In the absence of any allegation that the right was re-granted either by a private agreement or by executive fiat, the sole question for our consideration is whether the Government of India is under an obligation to recognise the right, if any, of respondent 1 by reason of a statutory provision which saves that right.

The first limb of Shri Sanghi's argument on behalf of respondent 1 is that the laws which were in force in the annexed territory continued to be in force therein even

after the annexation of that territory by the Government of India. According to the learned counsel, nothing was required to be done by the Indian Legislature to continue those laws in force inasmuch as they continued to operate on their own force despite the annexation of Goa by the Government of India. It is urged that section 5 (1) of the Administration Act provides for the continuation of all laws which were in force immediately before the appointed day, that is before December 20, 1961, and a plain and necessary implication of that provision is that all laws which were in force in the annexed territory before the appointed day continued to be in force in that territory after the appointed day. There was, therefore, no hiatus between the appointed day and March 5, 1962 when the Administration Act came into force. This implication is read by counsel in the provision of section 5 (1) on the reasoning that it could not possibly have revived something which had already died a natural death on the date of annexation. He contends that the expression "continue to be in force" used in section 5 (1) presupposes that the laws which were in force in the annexed territory prior to the date of annexation were still in force and all that was required was the expression of a legislative will to continue those laws in force until they are amended or repealed by a competent legislature or other competent authority. Counsel illustrated his argument by taking the example of the penal laws of Goa. Those laws, says he, could not be deemed to have come to an end with the conquest of Goa for, otherwise, its inhabitants would have got a free licence to commit any crime that they chose like murder, arson and rape.

In support of this submission learned counsel relies on the decisions in The Mayor of the City of Lyons v. The East India Company, R. V. Vaughan, Rao Shiv Bahadur Singh v. The State of Vindhya Pradesh, Rajendra Mills v. I.T. Officer and Sebastlao v. State.

In Mayor of Lyons Lord Brougham said:

"It is agreed, on all hands, that a foreign settlement, obtained in an inhabited country, by conquest, or by cession from another Power, stands in a different relation to the present question, from a settlement made by colonizing, that is, peopling an uninhabited country. In the latter case, it is said, that the subjects of the Crown carry with them the laws of England, there being, of course, no lex loci. In the former case, it is allowed, that the law of the country continues until the Crown, or the legislature, change it. This distinction, to this extent is taken in all the books."

(pp. 270-71) The decision in Mayor of Lyons was referred to by Jagannadha Das J. in his judgment in Rao Shiv Bahadur Singh. Observing that the various component States became the United State of Vindhya Pradesh on March 18, 1948, the learned Judge said:

"In the normal course and in the absence of any attempts to introduce uniform legislation throughout the State, the pre-existing laws of the various component States would continue to be in force on the well-accepted principle laid down by the Privy Council in Mayor of Lyons v. East India Company."

It was held that by virtue of the orders of the Regent of Rewa of 1921 and 1922, the Indian Penal Code and the Criminal Procedure Code with the necessary adaptations were in force in the Rewa State and either became extended to the entire Vindhya Pradesh State from the 9th August, 1948, by Ordinance No. IV of 1948, or continued to be in force in the Rewa portion of that State by virtue of the principle laid down in Mayor of Lyons and were the penal law in force in the relevant area when the criminal acts in question were committed by the appellants.

R.V. Vaughan was a unique case in which a person in Jamaica had attempted to bribe a Privy Councillor in order to procure an office. Lord Mansfield C.J. Observed:

> "If Jamaica was considered as a conquest, they would retain their old laws until the conqueror had thought fit to alter them."

In Rajendra Mills, (supra) Rajagopala Ayyangar J., speaking for a Division Bench of the Madras High Court, quoted a passage from Hyde's "International Law" at page 397, which is to the effect that "Law once established continues until changed by some compe-

tent legislative power. It is not changed by mere change of sovereignty". Quoting Beale, the learned author says in a footnote in his book that:

> "There can be no break or interregnum in law. Once created it persists until a change takes place and when changed, it continues in such a changed condition until the next change and so on forever. Conquest or colonization is impotent to bring law to an end; in spite of change of Constitution the law continues unchanged until a new sovereign by legislative act creates a change."

On this consideration the Court rejected the contention that the right to claim arrears of tax due to the Central Government under the Government of India Act, 1935, did not pass or vest in the government of the Indian Union under the Constitution.

The decision of the learned Judicial Commissioner of Goa in Sebastlao, (supra) rejecting the contention advanced on behalf of a Portuguese citizen that the sovereignty of Goa before the appointed day "was Portugal, is Portugal and remains Portugal" and that after the conquest of Goa, India was exercising a mere de facto sovereignty over the erstwhile Portuguese territory for the purpose of international law, need not detain us.

These decisions on which Shri Sanghi relies may be considered as authority for the proposition that, as a general rule, laws which are in force in the annexed or conquered territory continue to remain in force after the conquest or annexation until they are altered or repealed. But the real question which will determine the controversy in these proceedings is whether the continuance, ipso facto, of old laws after the conquest or annexation is tantamount to a recognition, without more, of the rights and privileges accruing under those laws. Secondly, the general rule is naturally subject to any specific provision to the contrary which the new Government may make. These questions are directly covered by the decision of this Court in Pema Chibar v. Union of India (supra) and are no

longer res integra.

In Pema Chibar, (supra) the petitioner who was a resident of Daman, a former Portuguese territory, had obtained licences between October 9 and December 4, 1961 for the import of various goods. Those licences were valid for a period of 180 days. On December 20, 1961 the Portuguese territories of Goa, Daman and Diu were conquered by the Government of India, whereupon on December 30, 1961 the Military Governor of the conquered territory issued a proclamation recognising only certain kinds of import licences, amongst which were not included the licences granted to the petitioner. Having failed to obtain recognition for his import licences, the petitioner filed a petition in this Court under Article 32 contending firstly that under the Administration Act, the previous laws in the Portuguese territories continued in force from March 5, 1962, which amounted to recognition by the Government of India of all rights flowing from the previous laws which were in force in the Portuguese territories, and secondly, that section 4(2) of the Regulation preserved all rights and privileges acquired or accrued under the Portuguese law, as a result of which is right under the import licences which were issued to him under the Portuguese law stood preserved. These contentions were rejected by a Constitution Bench of this Court consisting of Gajendragadkar C. J. and Wanchoo, Hidayatullah, Shah and Sikri JJ. It was held by the Court that the mere fact that the old laws were continued did not mean that the rights under those laws were recognised by the Government of India and, therefore, the petitioner was not entitled to seek recognition of his import licences from the Government of India. Having held that in the face of the proclamation issued by the Military Governor on December 30, 1961, it was impossible to hold that the Government of India had adopted the laws of the a Portuguese Government the Court, speaking through Wanchoo J., observed:

> "But this is not all. The ordinance and the Act of 1962 on which the petitioner relies came into force from March 5, 1962. It is true that they provided for the continuance of old laws but that could only be from the date from which they came into force i.e. from March 5, 1962. There was a period between December 20, 1961 and March S, 1952 during which it cannot be said that the old laws necessarily continued so far as the rights and liabilities between the new subjects and the new sovereign were concerned. So far as such rights and liabilities are concerned, (we say nothing here as to the rights and liabilities between subjects and subjects under the old laws), the old laws were apparently not in force during this interregnum. That is why we find in s. 7(1) of the ordinance, a provision to the effect that all things done and all action taken (includ-
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> ing any acts of executive authority, proceedings, decrees and sentences) in or with respect to Goa, Daman and Diu on or after the appointed day and before the commencement of this ordinance, by the Administrator or any other officer of Government, whether civil or military or by any other person acting under the orders of the Administrator ff or such officer, which have been done or taken in good faith and in a reasonable belief that they were necessary for the peace and good Government of Goa, Daman and Diu, shall be as valid and operative as if they (had been done or taken in accordance with law. Similarly we have a provision in s. 9(1) of

> the Act, which is in exactly the C' same terms. These provisions in our opinion show that as between the subjects and the new sovereign, the old laws did not continue during this interregnum and that is why things done and action taken by various authorities during this period were validated as if they had been done or taken in accordance with law."

The argument based on the saving clause contained in sub- section (2) of section 4 of the Regulation was repelled by the Court thus:

> "As for Regulation No. XII of 1962, that is also of no help to the petitioner. The laws repealed thereby (as between the sovereign and the subjects) were in force only from March S, 1962. Section 4(2) on which reliance is placed would have helped the petitioner if his licences had been granted on March S, 1962 or thereafter. But as his licences are of a date even anterior to the acquisition of the Portuguese territories, s. 4(2) of the Regulation cannot help him. The contention under this head must also be . ' rejected."

The decision in Pema Chibar (supra) is an authority for four distinct and important propositions: (1) The fact that laws which were in force in the conquered territory are continued by the new Government after the conquest is not by itself enough to show that the new sovereign has recognised the rights under the old laws; (2) The rights which arose out of the old laws prior to the conquest or annexation can be enforced against the new sovereign only if he has chosen to recognise those rights; (3) Neither section 5 of the Administration Act nor section 4(2) of the Regulation amounts to recognition by the new sovereign of old rights which arose prior to December 20, 1961 under the laws which were in force in the conquered territory, the only rights protected under section 4(2) aforesaid being those which accrued subsequent to the date of enforcement of the Administration Act, namely, March 5, 1962; and (4) The period between December 20, 1961 when the territories comprised in Goa, Daman and Diu were annexed by the Government of India, and March 5, 1962 when the Administration Act came into force, was a period of interregnum. These propositions afford a complete answer to the contentions raised by Shri Sanghi. The judgment in Pema Chibar (supra) was brought to the attention of the High Court and was argued upon but surprisingly, it has not referred to the judgment at all. We have no doubt that if the High Court were alive to the position laid down in Pema Chibar, (supra) it could not have possibly come to the conclusion to which it did.

The true position then is that in cases of acquisition of a territory by conquest, rights which had accrued under the old laws do not survive and cannot be enforced against the new Government unless it chooses to recognise those rights. In order to recognise the old rights, it is not necessary for the new Government to continue the old laws under which those rights had accrued because, old rights can be recognised without continuing the old laws as, for example, by contract or executive action. On the one hand, old rights can be recognised by the new Government without. continuing the old laws; on the other, the mere continuance of old laws does not imply the recognition of old rights which had accrued under those laws. Something more than the continuance of old laws is necessary in order to support the claim that old rights have been recognised by the new

Government. That 'something more' can be found in a statutory provision whereby rights which had already accrued under the old laws are saved. In so far as continuance of old laws is concerned, as a general rule, they continue in operation after the conquest, which means that the new Government is at liberty not to adopt them at all or to adopt them without a break in their continuity or else to adopt them from a date subsequent to the date of conquest.

Int he instant case there was in the first place, on the authority of Pema Chibar, (supra) an interregnum between December 20, 1961 and March S, 1962. During that period, the old laws of the Portuguese regime were not in operation in the conquered territory of Goa. Secondly, the rights recognised under subsection (2) of section 4 of the Regulation did not extend any protection to the rights which had accrued prior to December 20, 1961 but envisaged only such rights which had come into being after March S, 1962 by reason of the laws continued by the Act and the Regulation. Apart from that position, the Government of India never recognised, either during the interregnum or thereafter, any rights on the basis of titles of manifest obtained by any person during the Portuguese rule. on September 16, 1964 the Government of India issued an order stating expressly that all applications for mineral concessions made to the Portuguese Government on the basis of titles of manifest shall be deemed to have lapsed. Thus, far from there being any recognition by the Indian Government of rights accruing from titles of manifest, there is a clear indication that it decided not to recognise those rights. It is significant that for two years after the order of the Government of India dated September 16. 1964, respondent 1 did not take any steps at all for the recognition or reassertion of his rights. He obtained an order of refund of the amount which he had paid to the Portuguese Government on the applications which were made by him for obtaining mineral concessions. It was on August 16, 1966 that he applied for a mining lease under the Indian Law. He did so after the appellant had obtained a mining lease in his favour on February 26, 1966 and he applied for a lease in respect of the very same areas over which the appellant was granted a mining lease. On September 20, 1967 the 'Central Government rejected the application of respondent 1 fora mining lease and it is eleven months thereafter that he filed a writ petition in the Delhi High Court challenging the various orders passed against him and the order by which a mining lease was granted to the appellant. We do not rely on these later facts for the purpose of showing any laches on the part of respondent 1 because the Court cannot take a hyper-technical view of self-imposed limitations when important rights are involved We have referred generally to the course of events, only in order to show how no right had accrued in favour of respondent I under the Portuguese law and how, correspondingly, no liability or obligation was incurred by the Portuguese Government which the Government of India would be under a compulsion to accept by reason of the provisions contained in section 4 of the Regulation.

Shri Sanghi tried to distinguish the decision in Pema Chibar by contending that whereas in that case the dispute was between the Government on the one hand and a citizen on the other, the dispute the instant case is between two individuals, namely, the appellant and respondent 1. It is contended by the learned counsel that the ratio of Pema Chibar cannot apply to a dispute of the present nature, especially since Wanchoo J. in his judgment in that case has stated A expressly that the decision was confined to the matter in which the dispute was not between two private citizens but between the State on the one hand and a citizen on the other. We may assume for the sake of argument that the ratio of Pema Chibar may be confined to cases in which the dispute is between the State and a

citizen and not between two or more citizens. But it is fallacious to say that the dispute in the instant case is between two private individuals. The case undoubtedly involves the consideration of competing claims made by the appellant and respondent 1 to a mining lease but the true question is whether the Government of India is under an obligation to grant a lease to respondent I by virtue of the fact, as alleged by him, that a right had accured in his favour under the Portuguese laws and that, by reason of the fact that those laws were continued by section S(l) of the Administration Act and further, that the rights which had accrued under those laws were saved by section 4(2) of the Regulation, the Government of India was bound to recognise his tight. If the appellant was not in the field and the Government of India were yet to reject the application of respondent 1, the self-same question would have arisen, which shows that the inter- position of the appellant cannot take away the present case out of the ratio of Pema Chibar, any more than the presence of a competing applicant for an import licence would have made a difference to the ratio of the decision.

Yet another attempt was made by Shri Sanghi to distinguish the decision in Pema Chibar by saying that whereas there was no Law as such regulating the grant of import licences, there is in the instant case a law which governs the grant of mining leases. We are unable to appreciate this distinction. The decision in Pema Chibar does not rest on the presence or absence of a law governing a particular subject-matter. Nor indeed does the decision say that there was no law at all governing the grant of import licences. In fact, the reference to the time limit of 180 days and to the restriction that no import can be made without a valid licence shows that there was in existence a law which regulated the grant of impart licences. Counsel relied on the decision in J. Fernandes and Co. v. The Deputy Chief Controller of Imports and Exports and Ors., (1) in order to show that during the Portuguese regime there was no law in existence governing the grant of import licences. We are unable to deduce any such conclusion from the said decision. The judgment does not say that there was no law governing the grant of import licences. It only says that the petitioner therein had failed to show that he possessed any right under the law. That would rather show that there was in existence a law governing the grant of import licences but that the petitioner was unable to show that he had any right under that law. We may mention incidentally that J. Fernandes and co. (supra) reiterated the position which has been treated over the years as well settled that rights available against the old sovereign can be enforced after conquest against the new sovereign, only if they are recognised by the new sovereign.

It is clear from the facts on the record of the case that the applications for mineral concessions made by respondent 1 on the basis of Title Manifests of 1959 had lapsed. Even assuming that those applications were pending when the Act and the Rules were extended to Goa on October, 1, 1963, respondent I 's applications could only be decided in conformity with the Act and the Rules. Section 4 of the Act and rule 38 of the Rules support this view. Section 21 of the Act makes it penal to do any prospecting or mining operation otherwise than in accordance with the Act or the Rules. The Act and the Rules having been made applicable to the territory of Goa on October 1, 1963, and the supposedly pending applications of respondent I not having been granted within a period of nine months, they must be deemed to have been refused under rule 24(3) of the Rules For these reasons, we set aside the judgment of the High Court, allow the appeals and dismiss the writ petition filed by respondent 1 in the Delhi High Court.

The appellant will get his costs here and in the High Court from Respondent 1. Hearing fee one set only.

N. V. K. Appeals allowed.