Dharmendra Kumar Singh vs The State Of Uttar Pradesh on 28 October, 2020

Equivalent citations: AIR 2020 SUPREME COURT 5360, AIRONLINE 2020 SC 791

Author: Sanjay Kishan Kaul

Bench: Hrishikesh Roy, Sanjay Kishan Kaul

Report

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL No. 12202 of 2018

DHARMENDRA KUMAR SINGH …Appellant

Versus

THE STATE OF UTTAR PRADESH & ORS. …Respondents

With

Civil Appeal No.11368/2018

Civil Appeal No.5257/2019

Civil Appeal No.5093/2019

Civil Appeal No.7002/2019

JUDGMENT

SANJAY KISHAN KAUL, J.

1. 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 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:

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.

3. Mining leases granted to projects in the mineral rich district of Sonbhadra, carved out of the district Mirzapur in the State of Uttar Pradesh (for short 'State of UP') 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 O.A. No.429/2016, inter alia seeking directions for immediate prohibition of alleged illegal mining in the vicinity of Kaimur Wildlife Sanctuary located in Village Billi Markundi in Sonbhadra District. The area being ecologically sensitive and preservation of wildlife being the objective, the NGT issued notices in the matter.

4. In pursuance of this initial development, a 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(2) and (3) of the Environment (Protection) Act, 1986 (hereinafter referred to as the 'EPA').

5. The State of UP 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. The NGT called upon the State of UP to explain the position of these leases in view of the order it had passed on 4.5.2016 in T.N. Godavarman Thirumalpad v. Union of India and Ors.1 by way of which the NGT had directed the State of UP to cancel all mining leases and all other non-forestry activities on the areas notified under Section 4 of the Indian Forest Act, 1927 (hereinafter referred to as the 'Forest Act'). In order to appreciate the ramifications, Section 4 of the Forest Act is extracted hereinunder:

> "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—
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> (a) declaring that it has been decided to constitute such land a reserved forest;
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> (b) specifying, as nearly as possible, the situation and limits of such land; and
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> (c) appointing an officer (hereinafter called "the Forest Settlement-

officer") to inquire into and determine the existence, nature and extent of any rights alleged to exist in favour of any person in or over any land comprised within such limits or in or over any forest-produce, and to deal with the same as provided in this Chapter.

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

1 In M.A. No. 1166 and 1164 of 2015 decided on 4.5.2016 (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." The purport of the Notification is, thus, to specify as to what lies within the limits of reserved forest area.

6. The NGT in the said proceedings noted the admission of the State of UP 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:

> "20. Notification declaring forest reserved.—(1) When the following events have occurred, namely:—
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> (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;
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> (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
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> (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, 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.
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> (2) From the date so fixed such forest shall be deemed to be a reserved forest." 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 13.7.2018 that

all leases under Section 4 area be prohibited by the State of UP forthwith. The review filed by the State of UP 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 13.7.2018 by the appellants before us, except for appellants in C.A. No. 5093/2019 where order dated 25.3.2019 of the NGT has been impugned. However, this order was also decided in terms of the main impugned order dated 13.7.2018

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 gettis/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 UP, its concerned departments and officers, MoEFCC, as well as AIKPF (the original petitioners before the NGT) as respondents. The appeals, inter alia, are 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. 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:

	Civil Appeals	Material	Village	Lease Duration	Date of Suspension Order
1.	CA No.12202/2018 Dharmendra Kumar Singh	Dolostone (Boulder)/Gitti	Billi Markundi	29.6.2009 to 28.6.2019	29.8.2018
2.	CA No.11368/2018 Qaiser Shikoh	Dolostone (Boulder)/Gitti	Billi Markundi	17.2.2011 to 16.2.2021	29.8.2018
3.	CA No.5257/2019 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
	Sai Ram Enterprises Neelkanth Mining (the only claim in this Civil Appeal since other lease periods have started)	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
	Gyanendra Tripathi C.S. Infrasconstruction Amit Enterprises				
5.	CA No.7002/2019 Krishnaanand Singh	Gitti/boulder	Billi Markundi	From 3.3.2007 to 02.03.2017	29.8.2018

Prior Litigations:

8. 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 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 UP 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 & Ors.2 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 scrutinize all claims and thereafter the matter be placed before the Additional District Judge (for short 'ADJ') as a suo moto 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 2 (1986) 4 SCC 753 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 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.29546/2003 titled Ved Prakash Garg & Ors. v. Additional District Judge, which itself was deciding the grievance of a large number of 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 UP 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 SLP (C) (Diary) No. 33675 of 2018. 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.

9. The second line of litigation pertains to events of 1992 when the Uttar Pradesh State Cement Corporation (for short 'UPSCCL') became a sick industry and was put to auction where M/s Jayprakash Associates Limited (for short 'JAL') emerged as the highest bidders. The significance of this event is that it culminated in the order in the T.N. Godavarman case dated 4.5.2016, on which considerable reliance has been placed in the impugned order before us.3 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 4.5.2016 with directions, inter alia to the State of UP 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 Ashram4 case was reiterated and urgency to carry out the process under Section 4 and Section 20 of the Forest Act was emphasised.

3 (supra) 4 (supra)

10. 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:

11. We now turn to the present civil appeals in which notices were issued and the matters were clubbed. In the counter affidavit dated 23.4.2019 filed by the State of UP the factual progression discussed aforesaid in respect of the land excluded from the purview of Section 4 was set out. The State of UP 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 UP and it is only on 15.7.2020 that this Court noted that the Section 20 notification had finally been issued on 15.6.2020. Thus, it was noted by this 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 UP on this aspect.

12. The State respondents filed an additional affidavit dated 6.8.2020 setting forth its stand. It was contended by the State of UP 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').5 On 10.8.2020 while noticing the aforesaid and upon a query from the Court, the State of UP 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 5 Framed under Section 15 of the Mines and Mineral (Development and Regulation) Act, 1957 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 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 UP:

> 13. The State of UP 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 order. 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 metres 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 order and the order of the DM was that the mining operations had been obstructed pursuant to impugned order dated 13.7.2018 till the issuance of the notification under Section 20 of the Forest Act. The State of UP 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 UP, 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 period relatable to the obstructed period. The delay on the part of the State of UP 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 Ashram6 case.
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> 14. 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:

6 (supra) a. Sukhan Singh v. State of UP & Ors.7 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 31.05.2012 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. The State of UP and Ors.8 (This view received the imprimatur of the Supreme Court in Sulekhan Singh & Company and Ors. V. State of Uttar Pradesh & Ors.9).

b. In Mohammad Yunus Hasan v. State of UP & Ors.10 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:

> 7(2015) 2 All LJ 619 8 2013 SCCOnline All 13919 9 (2016) 4 SCC 663 10 (2016) 4 All LJ 4 “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 authorised 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.” 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 Chapter II11 and IV12 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 concerned parties.

c. In Vijay Kumar Dwivedi v. State of Uttar Pradesh13 the validity of permission granted by the State Government to 11 Grant of Mining Lease.

12 Auction Lease.

13 (2016) 4 All LJ 690 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 competent authorities was examined. Relying upon the observations in Mohammad Yunus Hasan14 case, 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 14 (supra) 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.

15. 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 UP 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.

16. It is also contended before us on behalf of the State of UP 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.— (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 installment payable during the disrupted period, online against the forthcoming installment." 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 installment payable during the disrupted period against the forthcoming installment. Thus, it was contended that the State of UP is only liable to refund (i) any security deposit, or (ii) advance royalties paid to it.

17. It was emphasised that in view of the judicial pronouncement in Vijay Kumar Dwivedi15 case 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.

15 (supra)

18. The sequitur to G.O. dated 31.5.2012 was pleaded to have been explained in the Nar Narain Mishra case16 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 Schedule 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.

19. 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. 16 (supra) An SLP preferred against this judgment was dismissed on 4.3.2016. Not only that, it was emphasized that the Supreme Court itself in the Sulekhan Singh17 case approved of the decision in Nar Narain Mishra18 case.

20. 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.

21. 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 17 (supra) 18 (supra) being challenged 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 GO 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 and Ors. v. State of Haryana and Ors.19 which in turn had extracted the recommendations of 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.20 The Appellants' Case:

> 22. The contentions of the appellants, on the other hand, led by 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

19 (2012) 4 SCC 629 20 Section 3(e) in The Mines and Minerals (Development and Regulation) Act, 1957 granted to the appellants were excluded from the purview of the Section 4 notification in pursuance of the settlement proceedings concluded as per directions in Banwasi Seva Ashram21 case. These settlement proceedings are pleaded to have been ignored while passing the impugned order and that too without notice to the appellants.

23. 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 the Banwasi Seva Ashram22 case right up to this Court and then the exclusion claim of JAL which culminated in the order 21 (supra) 22 (supra) of the Tribunal dated 4.5.2016, which it was contended, would have no bearing on their leases.

24. 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 & Ors.23 and Jagdish Prasad Nishad v. State of UP & Ors.24 In J.P. Yadav, the Apex Court observed that Rule 68 confers upon the State the powers to extend lease for the obstructed period and subsequently in Jagdish Prasad Nishad, 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. 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.

25. On a linked aspect, keeping in mind the predicament that the appellants find themselves in on account of Court orders, learned counsel 24 (2015) 128 RD 150 relied upon the observations in Beg Raj Singh v. State of UP & Ors.25 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 UP 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.

26. 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 M/s. Peethambra Granite 25 (2003) 1 SCC 726 Pvt. Ltd. v. State of UP & Ors.26 by the High Court Judicature at Allahabad. In this case, the directions issued in Vijay Kumar Dwivedi27 case 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.

27. 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.

28. 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 26 WRIT - C No. - 30066 of 2017 decided on 18.2.2020 27 (supra) payment of salaries, providing staff accommodation as also the costs of litigation as part of calculation of compensation.

29. 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 Appeal Nos.8804-8805/2019. 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 withdrawn on 29.9.2020 and the judgment was reserved in these appeals.

The Path We Take:

30. 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.

31. 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 the MoEFCC declared the 'area in question' as an ESZ under the provisions of the EPA. The sequitur was that the State of UP 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 Thirumalpad28 case for cancellation of all mining leases and all other non-forestry activities on areas notified under 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 13.7.2018, were towards this objective.

32. We have already noted that the leaseholders were, however, not 28 (supra) 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, and the mining activity was stopped resulting in the appeals before us. We, thus, called upon the State of UP 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 mean time, 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.

33. 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.

34. 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!

35. The judicial opinions referred to by learned counsel for the State of UP 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 Singh29 case). The statutory provision of Rule 68 of the Mining Rules, which has been strongly relied upon by 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 (Mohammad Yunus Hasan30 case). 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 (supra) 30(supra) 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 unambigous, recourse to different principles of interpretation, other than the rule of literal construction, cannot be resorted to.31 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.

36. We do find ourselves in agreement with the submission of the learned counsel for the State that the right to extension of lease either flow from a statutory provision or from the terms of the lease between the concerned parties. 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. 31 Delhi Transport Corporation v. Balwan Singh and Ors., 2019 SCC OnLine SC 276

37. We may notice that this view has been adopted by the Allahabad High Court in Vijay Kumar Dwivedi32 case 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.

38. 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 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.

32 (supra)

39. The State of UP 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.

40. We may also notice that the statutory rule, Rule 40(h) of the Mining Rules, extracted in para 16 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 installments payable during the disrupted period against forthcoming installments. 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 installments 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 UP that they are only liable to refund (i) any security deposit; or (ii) advance royalties paid to them, for this obstructed period – something to which the State of UP has already consented before us as recorded in our order dated 10.8.2020. The view taken by the High Court in Nar Narain Mishra33 case 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 Singh34 case. 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.

41. 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 33 (supra) 34 (supra) 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.35 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 UP 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.

42. 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 35 Beg Raj Singh case (supra) advance royalties to the respondent/State be also paid back to them along with something more.

43. 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% per annum.

44. 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% per annum 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.

Conclusion:

> 45. 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:

i. Security deposit, if not already refunded, with simple interest @ 9% per annum 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; and ii. Advance royalties, if not already refunded, with simple interest @ 9% per annum 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. iii. Both the aforementioned amounts be refunded within two months from today.

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

.....J. [Sanjay Kishan Kaul] .....J. [Hrishikesh Roy] New Delhi.

October 28, 2020.