

[Balochistan]

Before Muhammad Ejaz Swati and Abdullah Baloch, JJ

Malik MUSTAFA and 6 others---Petitioners

Versus

**SECRETARY, MINES AND MINERALS, GOVERNMENT OF BALOCHISTAN,
QUETTA and 4 others---Respondents**

C.Ps. Nos. 151, 157, 158 of 2011, Contempt Application No.22 of 2016 in C.P. No.157 of 2011 and C.P. No.444 of 2012, decided on 27th November, 2017.

Constitution of Pakistan---

----Art. 199---Constitutional petition---Factual controversy---Opportunity of hearing---Dispute between parties was with regard to mining leases and distribution of shares among family member during partition proceedings---Validity---Controversial questions of facts were raised by petitioners with regard to leases in question and the same were not addressed on merits---Proper opportunity of hearing was not afforded to petitioners, therefore, disputed aspects of the matter including notifications in question required determination by authorities after providing opportunity to parties concerned---High Court set aside notifications in question and remanded the matter to authorities for decision afresh with direction to the parties to appear before the authorities---Constitutional petition was allowed accordingly.

Muhammad Aslam Chishti and Talat Waheed for Petitioners (in C. P. No. 151 of 2011).

Muhammad Riaz Ahmed for Respondents Nos. 3 to 5 (in C.P. No.151 of 2011).

Syed Ayaz Zahoor for Intervener/ Respondent (in C.P. No.151 of 2011).

Syed Ayaz Zahoor for Petitioners (in C.P. No.157 of 2011) and for Applicant (Contempt Application No.22 of 2016).

Muhammad Riaz Ahmed for Respondents (in C.P. No.157 of 2011).

Syed Ayaz Zahoor for Petitioner (in C.P. No.158 of 2011).

Muhammad Riaz Ahmed for Respondent No.3 (in C.P. No.158 of 2011).

Muhammad Aslam Chishti for Petitioner (in C.P. No.444 of 2012).

Talat Waheed Khan for Respondents Nos.2 to 7 (in C.P. No.444 of 2012).

Syed Ayaz Zahoor for Respondents Nos.8 to 11 (in C.P. No.444 of 2012).

Muhammad Riaz Ahmed for Respondents Nos.12 to 14 (in C.P. No.444 of 2012).

Naseer Ahmed Bangulzai, Additional Advocate General for the State/Official Respondents (in all Petitions).

Date of hearing: 30th October, 2017.

JUDGMENT

ABDULLAH BALOCH, J.---Through this common judgment, we intend to dispose of Constitutional Petition No. 151 of 2011, Constitutional Petition No. 157 of 2011 along with contempt application No.22 of 2016, Constitutional Petition No. 158/2011 and Constitutional Petition No.444/2012, as common questions of facts and law are involved in all petitions.

Facts of C.P. No.151 of 2011.

2. According to the contents of petition, the petitioner No.1 is the son of late Malik Mir Hassan, while petitioners Nos.2 to 7 are the successors in interest of late Malik Mir Hazar Khan son of late Malik Mir Hassan; that the predecessor of petitioners had owned two business entities namely Messrs Green Marbles Works (Pvt.) Ltd. and Messrs Malik Mir Hassan Khan and Company, which had been granted certain marble leases, details are as under:

- i. Messrs Green Marbles Works (Pvt.) Ltd. bearing Allotment No.ML-Marble (8), measuring 71.22 Acres situated at near Zard Kan District Chagai;
- ii. Messrs Green Marble, bearing allotment No.ML-Marble (1479), measuring 50.00 Acres in Mashkeecha District Chagai;
- iii. Messrs Malik Mir Hassan Khan and Co., bearing ML-Marble (1417), measuring 150.00 acres near Jhully District Chagai:

3. It has further been averred in the petition that due to family partition in view of Arbitration Award/Decree dated 7th November 1979 passed by Hon'ble Sindh High Court, the petitioner No.1 and his brothers were granted 80% share, while 20% fell in the share of petitioner Nos.2 to 7, which fact of partition and shares of parties was well within the knowledge of D.G. Mines, but behind the back and due to unknown reasons, the leases were assigned to new parties. The details are as under:

- a) ML-Marble (8) near Zard Kan of Messrs Green Marbles was assigned to Messrs Pubni Minerals on 11-11-1987.
- b) ML-Marble (1479) near Mashkeecha of Messrs Green Marbles was assigned to Messrs Pubni Minerals on 16-10-1998.
- c) ML-Marble (1417) near Jhuly of Messrs Malik Mir Hasan and Com. Was assigned to Messrs Mir Marbles on 14-12-1998.

4. On coming to know about the above facts, the petitioner No. 1 immediately filed separate applications before the Director General Mines and Minerals, Balochistan (hereinafter referred as, "the DGMM"), which were allowed on 30th May 2007 and the assignments/transfers to Messrs Pubni Minerals and Messrs Mir Marbles were cancelled

and withdrawn; that the matter came up before this Court in C.Ps. Nos.358 and 361 of 2007, which were dismissed on 6th November 2007 and now the matters are pending adjudication before the Hon'ble Supreme Court in Civil Appeals Nos.96-Q/2009 and 97-Q/ 2009; during pendency of the matter before the Hon'ble Supreme Court, without intimating the petitioners and behind their back, the Director General Mines and Mineral Balochistan cancelled the above leases vide Notification dated 25th November 2009 on coming to know the petitioners Nos.2 to 7 immediately sent a legal notice to the DGMM for withdrawing the notification dated 25th November 2009; that thereafter the petitioners came to know about pendency of appeal filed by the respondent No.3 before the Secretary, Mines and Minerals. Government of Balochistan (hereinafter referred as, "the Secretary M&M") regarding Mining Lease No.ML-8, whereas no appeal was filed in respect of Mining Lease No.ML-1417 and ML-1479. However, after allotment of said leases by respondent No.2 to respondents Nos.3, 4 and 5, Work Order was refused to be granted in respect of said leases by the respondent No.2 on the ground that matter is pending before Hon'ble Supreme Court; that application for arraying party in the appeal(s) on behalf of petitioners was presented before the Secretary M&M, however, they were informed by the persons of the area that the appeals of respondents were accepted and they have also been issued work orders; though only one appeal was filed regarding the area of ML-8, by the garb of order dated 1st January 2011, the DGMM also issued allotment letters and work orders in area of two other mining leases i.e. ML-1417 and ML-1479, hence this petition has been filed by the petitioners, with the following prayer:

"It is therefore most respectfully prayed that order dated 01.01.2011 passed by respondent No.1 may kindly be set-aside in the interest of justice."

Facts of C.P. No.157/2011

5. Petitioner Firm, according to contents of petition was established on 5th July 1987 and it is stated that the Board of Directors of Messrs Green Marble Works (Pvt.) Ltd. passed a resolution on 10th October, 1987, whereby it was resolved to assign Mine having No.ML-Marble (8) situated at Zardkan district Chagai covering an area of 71.22 Acres to the petitioner's firm. A request was made to the DGMM, who accorded permission on 11th November, 1987 and the Mine was assigned to petitioner Firm. Similarly, on 1st July 1997 the Board of Directors of Messrs Green Marble Works Pvt. Ltd. passed a resolution for assignment of another mine bearing No.ML-Marble 1479 covering an area of 50 Acres situated at Mashki Chah, District Chagai to petitioner firm and a request was accordingly made to DGMM who accorded permission on 16th October 1997 with the result that above mines were assigned to petitioner firm, whereafter the petitioner being in possession of the respective mines is doing mining over the said Mines, without any objection from any quarter.

6. In the petition, the petitioner has given the break-up of partners of the firm and stated that the Firm was established on 5th July 1987 with its partners namely Muhammad Afzal Qureshi and Mrs. Surraya and subsequently on 23rd April 1995 another partner namely Muhammad Shafi Ansari son of Muhammad Yaqoob Ansari joined the partnership firm and Muhammad Afzal Qureshi retired from the partnership on 23rd April 1995; on 18th July 2006 two more partners joined the partnership firm namely Ahmed son of Izzat Khan and Faqeer Muhammad son of Mir Muhammad; on 1st August, 2006 Muhammad Shafi Ansari and Mrs. Surraya retired from the partnership firm and Ahmed Khan and Faqeer Muhammad continued to be the partners.

7. It is stated in the petition that Malik Mustafa was one of the shareholders/Director of Messrs Green Marble Works Pvt. Ltd., which assigned two mines to Pubni Minerals i.e. petitioner-firm Malik Mustafa retired from the Company of Messrs Green Marble Works Pvt. Ltd. on 10th August 1986 i.e. almost 11 months prior to establishing of Pubni Minerals; that after retirement of Malik Mustafa from the Company i.e. Messrs Green Marble Works Pvt. Ltd. as a shareholder and Director, he had absolutely no concern or correction in respect of the same. It appears from the record that Malik Mustafa is one of the legal heirs of late Malik Mir Hassan, who had owned several properties in Sindh and Balochistan and his legal heirs entered into an arbitration for distribution of properties owned by him and an award was passed on 07.11.1979. The record further reveals that after lapse of a period of almost 24-years, the elder brother on 3rd February 2003, filed a suit bearing No.85/2003 before the Sindh High Court for partition, possession and accounts against legal heirs of late Malik Mir Hassan, wherein the learned Single Judge passed an order on 23.02.2004 to the effect "no third-party interest will be created by the defendants in the suit property till the decision of the suit." The said order was challenged by way of filing H.C.A. No. 191/2004 which was dismissed by the learned Division Bench in High Court of Sindh at Karachi, vide order dated 07.09.2005. The record also reveals that thereafter respondents Malik Mustafa filed an application before the DGMM praying therein that "necessary direction may be issued to EDO/DO with the instructions to stop/restrain quarrying in above mining areas, further whatever has been excavated by Malik Mehboob, Malik Mehmood, Pubni Minerals and other companies names whereof mentioned above during the period from 23.02.2004 till today may kindly be declared against the stay order of the Hon'ble Court, therefore, direction be issued to Malik Mehboob, Malik Mehmood, Pubni Minerals and their associates to deposit the cost of material excavated during the said period till the decision of suit No.85 of 2003. The DGMM vide order dated 10.06.2006 passed ex parte order by reverting the areas of Messrs Pubni Minerals to Messrs Green Marble Works Pvt. Ltd.; that the elder brother, with mala fide intention in league with the DGMM after waiting for a sufficient period, on 22nd February 2007 filed C.P. No.61 of 2007 without making any of the legal heirs of late Malik Mir Hassan as party nor the petitioner before this Hon'ble Court, praying for directions to respondent No.1 for implementing his order dated 10th June 2006, on issuance of notice, the D.G. Mines and Minerals appeared and undertook to implement its order within 20-days; that the petitioner being unaware of the above orders carried out in Sindh High Court, as the counsel for the petitioner was waiting for the fate of application filed for setting-aside the ex parte order, but in order to technically knock out the petitioner, he has been kept in dark, however, when initiatives were being taken for reverting the assigned areas/mines to Messrs Green Marble Works Pvt. Ltd., for the first time the petitioners learnt about the same, hence immediately filed C.P. No.358/2007 before this Court, which was dismissed and presently the matter is pending adjudication before the Hon'ble Supreme Court; that surprisingly, the DGMM without issuing any notice to the petitioner, vide Notification dated 25th November 2009 cancelled the mining of the petitioner and granted the allotted area of the petitioner to the respondent Not by means of Prospecting License No.DG/ MM/PL-Marble (3520)/41-43 and to the respondent No.3 vide Prospecting License No.DG/MM/PL-Marble (3521)/44-46. Hence, this petition has been filed, with the following prayer:

- A. Declaring that cancellation of Mining Lease of the petitioner vide Notification. ML-Marble (8)/Vol:(1)6955- 56 dated 25.11.2009 by the respondent No.1 and subsequently granting the allotted areas of the petitioners to the respondents Nos.2 and 3 vide Prospecting Licenses No. DGMM/PL-Marble (3520)/41-43 and No. DGMM/ PL-Marble (3521)/44-43 both dated 3rd January, 2011 over areas of 50.00

acres and 444.21 acres respectively, are totally, illegal, improper, void, having been issued in excess and mis-exercise of authority and jurisdiction vested in him under the provisions of Rules 57 and 90 of the Balochistan Minor Mineral Concession Rules, 2002, therefore, are of no legal consequences.

- B. On having declared so, the impugned Notification dated 25.11.2009 issued by the respondent No. 1 and subsequent orders as well as the Prospecting Licenses dated 3rd January, 2011 issued in favour of respondents Nos.2 and 3, may be set aside.
- C. Permanently restraining the respondents from interfering in the allotted/granted area of the petitioners.
- D. Any other relief deemed fit and proper in the circumstances of the case may also be awarded, along with the cost of the petition, in the interest of justice."

Facts of C.P. No.158/2011:

8. The petitioner firm, according to contents of petition was established on 1st January 1976 by two partners namely Malik Mehmood son of Mir Hassan and Miss Saeeda Malik daughter of Malik Mir Hassan Khan. According to the petitioners an area of 186 Acres of land situated in Jhully Tehsil Noukundi, District Chagai was earlier allotted to Messrs Malik Mir Hassan Khan & Co. however, the said area was surrendered by the said Company through its Managing Partner Malik Mir Hassan Khan in favour of petitioner firm vide his letter dated 25th June 1976 sent to Joint Director Development of Mineral Development Department resulting in issuance of Notification dated 09th July 1976 by the Joint Director Minerals, whereby 186 Acres earlier granted in favour of Malik Mir Hassan Khan and Company was treated to be cancelled and a prospecting license dated 20th September 1976 was issued in favour of petitioner firm. In the meanwhile, one of partners i.e. Saeeda Malik retired from partnership firm and in her place Malik Mehmood became partner of the firm and in this regard an agreement was also executed on 29th September 1981 with intimation to the Registrar of Firm Balochistan, Quetta. Prospecting License granted in favour of petitioner firm was converted into Mining Lease i.e. ML-Marble 1672. The record reveals that other areas i.e. 1376 acres and 330.6 Acres were also granted to Messrs Malik Mir Hassan and Companies on the basis of Prospecting License issued to it by Secretary M&M. Both these areas were situated in Jhully District Chagai. The said Prospecting License of Malik Mir Hassan was reduced from 1376 Acres to 150 Acres and the license was converted into mining lease bearing ML-Marble 1417 vide letter dated 05th November 1998. According to petitioners in November 1998 on the request of Managing Partner of Malik Mir Hassan Khan and Company i.e. Malik Mehmood for assignment of the mining lease in favour of petitioner firm, respondent No.1 on 14th December 1998 accorded permission and ML-Marble 1417 was assigned in favour of petitioner firm and in this regard a lease deed was also executed in their favour on 15th December, 1998. However, after this date of assignment/execution of mining lease in favour of Mir Marbles the firm Malik Mir Hassan Khan and Company had no title interest in the said area i.e. ML-Marble 1417. It appears from the record that Malik Mustafa is one of the legal heirs of late Malik Mir Hassan, who had owned several properties in Sindh and Balochistan and his legal heirs entered into an arbitration for distribution of properties owned by him and an award was passed on 07th November 1979 and the matter of distribution/partition has been finalized; that after lapse of almost 24-years, the elder brother on 3rd February 2003, filed a suit bearing No.85/2003 before the Sindh High Court for partition, possession and

accounts against legal heirs of late Malik Mir Hassan, wherein the learned Single Judge passed an order on 23rd February 2004 to the effect "no third party interest will be created by the defendants in the suit property till the decision of the suit." The said order was challenged by way of filing H.C.A. No.191/2004 which was dismissed by the learned Division Bench in High Court of Sindh at Karachi vide order dated 07th September 2005. The record also reveals that thereafter respondents Malik Mustafa filed an application before the DGMM praying therein that necessary direction may be issued to stop/restrain the mining work being carried out by Malik Mehboob, Malik Mehmood, Pubni Minerals and other companies names whereof mentioned above during the period from 23rd February 2004 till today, notices were issued to the concerned, who filed their replies with the assertions that the applicant Malik Mustafa or the other legal heirs of late Malik Mir Hassan had no concern or connection in respect of petitioners' firm i.e. Mir Marbles, ML-Marble 1417; that the DGMM vide order dated 10th June 2006 passed ex parte order by reverting the areas of Messrs Pubni Minerals to Messrs Green Marble Works Pvt. Ltd.; that Malik Mustafa with mala fide intention, in league with the DGMM, after waiting for a sufficient period, on 22nd February 2007 filed C.P. No.61 of 2007 without making any of the legal heirs of late Malik Mir Hassan as party, nor the petitioner before this Court, praying for directions to Secretary M&M for implementing his order dated 10th June 2006, on issuance of notice, the DGMM appeared and under took to implement its order; that the petitioner being unaware of the above orders carried out in Sindh High Court, as the counsel for the petitioner was waiting for the fate of application filed for setting-aside the ex parte order, but in order to technically knocked out the petitioner, he has been kept in dark, however, when initiatives were being taken for reverting the assigned areas/mines back to Malik Mir Hassan Khan and Company or the first time the petitioners learnt about the same; that letter dated 30th May 2007 was issued, wherein the assignment of the mine in question was withdrawn and further the respondent No.2 directed that all the legal heirs of Malik Mir Hassan will be the shareholders in the above leases as per Sharia; that after passing the impugned order by the D.G. Mines, he has been promoted as Secretary Mines, hence holding the post of appellate Authority, no appeal could be filed before him, hence having no alternate remedy, the petitioners filed C.P. No.361/2007 before this Court, which was dismissed and presently the matter is pending adjudication before the Hon'ble Supreme Court; that during pendency of appeal before the Hon'ble Apex Court, the official respondent No.2 granted the area to respondent No.3, vide order dated 6th May 2010; that thereafter issuance of Prospecting License was refused to the respondent No.3 by the respondent No.2 against the allotted area of petitioner, vide letter dated 12th October 2010; that against the letter/order dated 12th October 2010, the respondent No.3 filed an appeal before the Secretary M&M, in which the petitioners made his appearance with the request to array him as party to the proceedings, which was acceded to and notice was issued to the petitioner for appearance on 4th December 2010 and thereafter the matter was adjourned to 24th December 2010 for want of Presiding Officer and no fixed date was given, but on queries it was informed that the matter has been fixed for 8th January 2011, when on the said date the petitioner along with his counsel made his appearance, whereby it has been informed to them that the matter has already been finalized vide order dated 1st January 2011, whereafter the DGMM without issuing notice to the petitioner cancelled the area allotted to him i.e. ML-Marble (1417) vide Notification dated 25th November 2009, whereafter instant petition has been filed, with the following prayer:

- A. Declaring that cancellation of Mining Lease i.e. ML-Marble (1417) vide Notification No.ML-Marble(8)/Vol(1)/6955-56 dated 25.11.2009, issued by respondent No.2 and allotment of the same in favour of respondent No.3 vide

Allotment/Offer letter dated 06.05.2010 by respondent No.2. is contrary to provisions of Rules 57 and 90 of the Balochistan Minor Minerals Concession Rules, 2002 which may be declared as totally illegal, in excess and mis-exercise of powers vested in respondent No.2, and is thus without lawful authority and jurisdiction, therefore, is of no legal consequences.

- B. Further declaring that the Order dated 01.01.2011, passed by learned Respondent No.1 in an appeal filed by the respondent No.3 against the Order of respondent No.2, is totally illegal, improper, unjust, in violation to the provisions of Balochistan Minor Mineral Concession Rules, 2002 and in excess and mis-exercise of authority vested in him, therefore, is also of no legal consequences.
- C. On having declared so, the impugned order dated 01.01.2011, passed by the respondent No.1 and Notification dated 25.11.2009, issued by the respondent No. 2, may be set aside with the directions to the respondents not to take any action till decision of petition pending before this Hon'ble Court.
- D. Any other relief deemed fit and proper in the circumstances of the case may also be awarded, along with the cost of the petition.

Facts of C.P. No.444/2012:

9. Facts of the case are that the petitioner along with predecessor of respondents Nos.2 to 7 and respondents Nos.8 to 11 was party to the Civil Suit No.378/1979 filed before High Court of Sindh decided on the basis of which award was made rule of the Court in the year 1979 and finally after fulfilling the legal requirements of registration etc. the said "Award Decree" was registered in 1985; that certain properties were distributed/separated amongst the shareholders, while the business entities were decided to be held jointly as a joint venture, which is comprising of three mines bearing No.ML-Marble (8) situated at Zardkan, ML-Marble (1479) situated at Mashki Chah and ML-Marble (1417) situated at Jhully of District Chagai; that basically the said mines were allotted to two mining companies namely Messrs Green Marble Works Pvt. Ltd. and Messrs Malik Mir Hassan Khan & Co. Pvt. Ltd., while out of three mining leases, lease No.ML-Marble (8) situated at Zardkan and ML-Marble (1479) situated at Mashki Chah were the business entities and were allotted to Messrs Green Marble Works Pvt. Ltd. and ML-1417 near Jhully was allotted to Malik Mir Hassan Khan & Co., while behind the back of petitioner ML-Marble (8) and ML-Marble (1479) were assigned to Messrs Pubni Minerals, whereas the third lease ML-Marble (1417) was assigned to Mir Marble Pvt. Ltd. in 1998; that the predecessor of respondents Nos.2 to 7 namely Mir Hazar Khan had already filed execution application No.47/1985 before the Sindh High Court for their 20% shares in the joint ventures including three mines; that the petitioner has also filed a suit for partition, possession and permanent injunction being civil suit No.85/2003 against respondents Nos.2 to 11 along with all the other legal heirs of late Malik Mir Hassan Khan, in which injunction order has also been passed in favour of the petitioner that "no third party interest will be created by the defendants in the suit property", which injunction order has been conveyed to DGMM during the proceedings of execution application pending in the High Court of Sindh and in such behalf letter dated 2nd December 2008 along with certified copies of proceedings of High Court of Sindh from Deputy Registrar/ Nazir High Court of Sindh to DGMM as well as D.C.O. District Chagai Balochistan, whereby it was directed to hand over and deposit 20% share of Malik Mir Hazar to the Nazir of the Court in respect of joint venture and Green Marbles Works Ltd.,

which was replied by DGMM on 20th January 2009, hence another letter was addressed to it by the Naazir of the High Court of Sindh, which was again replied on 3rd March 2010, whereby given the details of information regarding material excavated from the period of 1985 upto the date was provided by the DGMM to the High Court of Sindh, meaning hereby that the DGMM was well aware of the execution proceedings before the High Court of Sindh; that vide letter dated 4th May 2010 addressed to DGMM by High Court of Sindh requiring details of material excavated from 1982, which details were accordingly provided; that behind the back of petitioner and other legal heirs, mining lease from the companies of Green Marble Pvt. Ltd. and Malik Mir Hassan Khan and Co. were assigned to Messrs Pubni Minerals and M/S Mir Marbles Pvt. Ltd. and having coming knowledge of the same the petitioner made several applications to DGMM for cancellation of such assignments, which applications were accordingly allowed and the assignments were cancelled vide order dated 10th June 2006, which order was assailed before this Court in C.Ps. Nos.358 and 361/2007, but the same were dismissed and presently the matter is pending adjudication before the Hon'ble Supreme Court; that DGMM was party in both the petitions pending before this Court as well as before the Apex Court in CPLA Nos.30/Q and 31/Q of 2008, but despite such fact the DGMM cancelled the above mentioned three mines behind the back of the petitioner without any notice to the petitioner, hence no appeal could be filed in time; that the DGMM granted the said areas of three mines to respondents Nos.12 to 14, vide offer letter dated 6th May 2010, but subsequently allotment/ grant order was refused to the respondents Nos.12 to 14 by DG Mines, vide order dated 12th October, 2010, which was assailed before the Secretary M&M; that on coming to know about pendency of appeal before Secretary M&M, the petitioner filed an application for arraying him in the proceedings, which allowed, however, vide order dated 1st January 2011 appeal of respondent No.13 was allowed directing DGMM to issue work order; that in the garb of one appeal filed by the respondent No.13, allotment order was also issued to the respondents Nos.12 and 14, though they had not assailed the order dated 12th October 2010 before the Secretary M&M; that the appeal filed before the Secretary Mines and Minerals against cancellation order dated 25th November 2009, which was dismissed vide order dated 2nd April 2012 on the ground of limitation though application for condonation has already been filed. The petitioner being aggrieved against the order dated 2nd April 2012, has filed the instant petition, with the following prayer:

- A. This Hon'ble Court may declare the impugned order dated 02.04.2012 passed by the respondent No.5 as appellate authority has been passed without lawful authority and jurisdiction and is of no legal effect.
- B. It may also be declared that order dated 25.11.2009 passed by respondent No.1 whereby three mines ML-Marble (08) near Zardgan ML Marbal (1479) Near Mashkecha and ML Marble (1417) near Jhully were cancelled under Rule 90 is illegal and passed without lawful authority and jurisdiction as such not holding the field.
- C. That consequential order/writ of mandamus may also be issued to stop all mining operations upon the said leases by respondents Nos.12, 13 and 14.
- D. That order of respondent No.1 issuing allotment letter dated 03.01.2011 to respondents Nos.13 and 14 is contradictory to its own earlier order dated 12.10.2011 in favour of respondents Nos.13 and 14 are void ab initio and is of no legal effect.

- E. That offer letter dated 06.05.2010 passed in the favour of respondents Nos.12, 13 and 14 by respondent No.1 on 03.01.2011 regarding above said mining areas of petitioner be cancelled forthwith.
- F. Any other relief as deemed fit and proper in the circumstances of the case may also be awarded.
- G. Cost of the petition may also be awarded.

10. It appears from the record that the respondents in all the petitions have also filed their parawise comments and counter affidavits along with relevant documents, each of the respondents in the petitions raised certain legal objections regarding maintainability of the petitions. Anyhow, the petitioners in C.P. No.157/2011 has also filed a Contempt Application No.22 of 2016 against Messrs Adnan Marble Enterprises through Adnan Aziz Kurd, who allegedly committed violation of order dated 17th March 2011 by this Court.

11. The learned counsel for the petitioners unanimously contended that since common question of setting aside of notification dated 25th November, 2009 passed by the Director General Mines and Minerals Balochistan is involved in all the aforesaid petitions, as such, the learned counsel for the petitioners altogether contended that the impugned notification dated 25th November 2009 passed by the Director General Mines and Minerals Balochistan suffers from illegalities and irregularities and contrary to the facts law and principle of natural justice; that all the subsequent orders issued by the Director General Mines and Minerals are also illegal out comes of the said order; that earlier to the above notification in respect of mines in question the Director General Mines and Minerals Balochistan passed an order dated 10th June 2006, which was challenged by some of the petitioners before this Hon'ble Court by means of filing C.Ps. Nos.358 and 361 of 2007, which were dismissed, thereafter both the orders were challenged before the Hon'ble Supreme Court of Pakistan by means of Civil Appeals Nos.96/2009 and 97-Q/2009 and leave to appeal was granted; that the matter is sub judice before the Hon'ble Supreme Court of Pakistan. In view of the above, subsequent order/notification passed by the Director General Mines and Minerals Balochistan are without lawful authority.

12. The learned counsel for the petitioners in C.P No.151 of 2014 contended that against the notification dated 25th November 2009, the petitioners came to know that an appeal is pending before the Secretary Mines filed by the respondent No.3, as such, they also filed an application for arraying party, but without impleading them as party, the appeal of the respondent No.3 was allowed vide order dated 1st January 2011, which is contrary to law facts and justice, thus liable to be set aside; that the petitioners were not given proper opportunity by both the forums below to defend their rights and the impugned orders passed both the forums below suffer from surmises, conjectures and infirmities and not sustainable, thus liable to be set aside.

13. Conversely, the learned counsel for the private respondents vehemently opposed the arguments so advanced by the learned counsel for the petitioners and contended that the petitioners have failed to challenge the notification of Director General Mines and Minerals Balochistan before the appellate authority and filing of direct Constitutional Petition before this Court is not competent; that the petitioners have no locus standi and no cause of action to file such petitions against the private respondents by garb of the illegal allotments, which were subsequently cancelled by the competent authority and the

petitioners have failed to file appeal against the said orders within the prescribed period before the competent authority; that the subject matter in all petitions is subjudice simultaneously before the Hon'ble Supreme Court of Pakistan as well as Hon'ble Sindh High Court Karachi, as such, till the decision of above cases the petitions are not maintainable and liable to be dismissed.

14. On the other hand, the learned Additional Advocate General appearing on behalf of the official respondents also strongly opposed the contentions of the learned counsel for the petitioners and supported impugned orders/notifications passed by the official respondents and also prayed for dismissal of petitions of the petitioners.

15. We have heard the learned counsel for the parties and perused the record with their valuable assistance, which reveals that all petitions around the subject matter of leases initially belongs to one Malik Mir Hassan, who had owned two business entities namely Messrs Green Marbles Work (Pvt) Ltd and Messrs Malik Mir Hassan and Company, which had been granted certain Marble leases, details whereof are as under:--

- i. Messrs Green Marbles Works (Pvt.) Ltd. bearing Allotment No.ML-Marble (8), measuring 71.22 Acres situated at near Zard Khan District Chagai;
- ii. Messrs Green Marble, bearing allotment No.ML-Marble (1479), measuring 50.00 Acres in Mashkeecha District Chagai;
- iii. Messrs Malik Mir Hassan Khan & Co., bearing ML-Marble 0417), measuring 150.00 acres near Jhully District Chagai;

16. It is further transpired from the record that due to family partition view of arbitration award/decreed dated 7th November 1997 passed by the Hon'ble Sindh High Court, wherein share of the parties were determined, but during the course of pendency of litigation behind the back and due to unknown reasons, the leases were assigned to new parties by the Director General Mines and Minerals on different time and thereafter the successors of Malik Mir Hassan filed separate applications before the Director General Mines and Minerals Balochistan, which were allowed on 30th May 2007 and the aforesaid Mines were cancelled/ withdrawn, however, assailed in C.Ps. Nos.358 and 361/2007, which were later on dismissed on 6th November 2007 by this Court, which was assailed in Civil Appeal No.96-Q of 2009, wherein the Hon'ble Supreme Court of Pakistan, vide judgment dated 10th November 2015 passed order, as under:--

"In both these connected appeals, which are fixed today for hearing, during the course of his arguments, Syed Ayaz Zahoor, learned ASC for the appellant has submitted two separate applications under Order XXIII, Rule-6, of the Supreme Court Rules, 1980 being C.M.As. Nos.7767 and 7768 of 2015, seeking disposal of these appeals in the following manner:-

"2. That the Civil Appeal be disposed of on the following terms: -

- i. That the proceedings initiated by Respondent No.2 before Respondent No.1 was totally without lawful authority and in excess of jurisdiction, thus Order dated 10.6.2006 passed be set aside and the application so filed by the Respondent No.2 i.e. Malik Mustafa be dismissed.
- ii. That the observations made in the impugned judgment of the Hon'ble High Court of Balochistan shall not come in the way of the parties in the Civil Suit No.

85 of 2003 pending before the Hon 'able High Court of Sindh.

iii. That the Constitution Petitions pending before the Hon'ble High Court of Balochistan, Quetta shall be decided on its own merits to the extent of the impugned order dated 25.11.2009 passed by the Director General Mines and Order passed in Appeal by the Secretary Mines and Minerals dated 02.04.2012, whereas in mines in question were cancelled, strictly in accordance with law. Detail of the Constitution Petitions are as under:

1. C.P. No.151 of 2011 titled as Malik Mustafa and others v. Secretary Mines and Mineral and others.

2. C.P. No.157 of 2011 titled as Pubni Minerals v. Director General Mines and Minerals and others.

3. C.P. No.158 of 2011 titled as Mir Marbles v. Secretary Mines and Minerals and others.

4. C.P No.444 of 2012 titled as Malik Mustafa v. Secretary Mines and Minerals and others.

1. That the Civil Suit No.85 of 2003 pending before the Hon'ble High Court of Sindh in its original jurisdiction shall be decided expeditiously within a period of three (03) months.

2. Notice of these applications is waived by the other learned ASCs present in Court, who have objected to clause (i) of Para-2 of the application, as reproduced above, and contended that it may be detailed and rephrased as under:-

"that the proceedings pending before the Balochistan High Court and the High Court of Sindh shall be without prejudice to the rights of the parties with reference to any observation contained in the order dated 10.06.2006."

3. By consent, both the above captioned appeals are disposed of according.

4. insofar as the interveners are concerned, their claim in the pending litigation will be considered by the High Court of Balochistan and the High Court of Sindh on the basis of their application for impleadment, if they are not already parties, which will be heard and decided by each forum strictly on merit and in accordance with law, without being prejudice with this order."

17. It appears that during pendency of the civil appeals before Hon'ble Supreme Court of Pakistan, the above three Mining Leases of the petitioners were cancelled vide notification dated 25th November 2009 and vide prospecting license granted to the private respondents dated 3rd January 2011, and Prospecting License No. DGMM/PL Marble (3521) 44-46 over an area 444.21 situated near Zard Khan District Chagai respectively. The record further reveals that Messrs Adnan enterprises prospecting license was granted vide order dated 6th May 2010, he moved an application for issuance of work order which was declined by the Director General Mines, vide order dated 12th October, 2010, which was assailed in appeal before Secretary Mines and Minerals (Appellate Authority). The appellate authority vide impugned order dated 1st January 2011 allowed appeal, however, the petitioner in C.P. No.151 of 2011 only assailed order dated 1st January 2011 instead of order dated 12th October 2010.

18. The petitioner in C.P. No.151 of 2011 claimed that subject lease belong to them

and Messrs Pubni Mince Karachi and Mir Marble had fraudulently got the subject lease through assignment order in their favour.

19. On the other hand, i.e. C.Ps. Nos.157/2011 and 158/2011 Messrs Pubni and Mir Marble declared that on the basis of assignment order issued by the official respondents in their favour in the year 1987 and 1997, the petitioners of C.Ps. Nos.151 and 444 of 2012 have no right over the subject lease. The documents annexed along with C.Ps. Nos.157 and 158 of 2011 reveal that Marble mining lease No. ML Marble (8) over an area of 71.22 Acres situated in Zard Khan District Chagai was transferred vide assignment letter dated 11th November 1987 issued by the official respondents in favour of Pubni Mineral Karachi. ML Marble (1479) over an area of 50 Acres of land situated near Mashkech District Chagai was allegedly transferred vide assignment letter dated 16th October 1997 in favour of Messrs Pubni Mineral Karachi. It was further alleged that in the year 1998 on the request of the existing partner of Malik Mir Hassan and Company i.e. Malik Mehmood an area of 150 acres ML-Marble (1417) near Jhully District Chagai was assigned in favour of "Mir Marble" vide assignment lease executed on 15th December 1998 for the term up to 16th March 2017. It appears that in C.P. No.151 of 2011 the petitioner on the strength of Malik Mir Hassan and company claimed his right over the mining leases in question, while petitioners in C.Ps. Nos.157 and 158 of 2011 besides above, claimed their rights on the basis of assignment orders, but none of the petitioners except petitioner in C.P. No.444 of 2012 challenged the order dated 25th November 2009 by way of filing appeal before appellate authority. On the other hand the private respondents i.e. Kurdhish and Co and Adnan Enterprise & Co. besides their claim on prospecting license dated 6th May 2010 issued in their favour with regard to Mining Lease (8) and Zard Khan District Chaghi over an area 444.21 acres. The petitioner in C.P. No.444 of 2012 has challenged the order dated 25th November 2009 at belated stage by way of filing appeal before appellate authority and in appeal the concern parties were impleaded as parties, but the appellate authority has dismissed the appeal vide impugned order dated 2nd April 2012 on the point of limitation. Since the controversial question of facts had been raised by the petitioner with regard to the leases in question, which had not been addressed on merit nor proper opportunities had been afforded to them, therefore, above aspects of the matter including impugned notification dated 25th November, 2009, requires determination by the official respondents after providing opportunity to the parties concerned.

18. In view of the above, petitions are partly allowed. The impugned order dated 1st January 2011 arising out of C.P. No.151 of 2011 and order dated 2nd April 2012 passed by the appellate authority arising out of C.P. No.444/2012 to the extent of areas of leases in question alleged by the petitioners are set aside and matter deemed to be pending before the Secretary Mines and Minerals Balochistan. Parties are directed to appear before the Secretary Mines and Mineral Balochistan (appellate authority) on 7th December, 2017 to decide the matter in accordance with law.

Consequently the Contempt Application No.22 of 2016 is hereby dismissed. Parties are directed to bear their own costs.

MH/183/Bal.

Case remanded.