

**IN THE HIGH COURT OF BOMBAY AT GOA****WRIT PETITION NO.206 OF 2015**

Smt. Geetabala M. N. Parulekar,
Widow, aged 74, Indian National,
Residing at House No.79,
Altinho, Mapusa, Bardez- Goa,
through her Power of Attorney Holder,
Shri Umesh Bhakta,
aged 54, Indian National, residing at Mapusa,
Bardez- Goa. Petitioner

Versus

1. State of Goa, through its
Chief Secretary, having
office at Secretariat,
Porvorim- Goa.
2. The Director of Mines and Geology,
Government of Goa,
having office at Ground Floor
Panaji- Goa.
3. Sub-Registrar of Valpoi,
Sattari Taluka,
Office of Sub-Registrar of Valpoi,
Sattari Taluka, Valpoi. ... Respondents

WITH
WRIT PETITION NO.208 OF 2015

Sociedade Timblo Irmaos Limitada,
Represented by,
Sociedade de Fomento Industrial Private Lim-
ited,
Having its office at Villa Flores da
Silva, Erasmo Carvalho Street,
Margao, Goa-403601.

Represented by its Director,
Mr. Francisco Lume Pereira
Resident of Verna-Goa
(Registered Address)
Versus

.... Petitioner

1. State of Goa, through its Chief Secretary, having office at Secretariat, Porvorim-Goa.
2. The Director of Mines & Geology, Government of Goa, having office at Ground Floor, Panaji-Goa.
3. The Sub-Registrar of Bicholim, Bicholim Taluka, Office of Sub-Registrar Bicholim, Bicholim-Goa. ... Respondents

**WITH
WRIT PETITION NO.207 OF 2015**

Sociedade Timblo Irmaos Limitada,
Represented by, Sociedade de Fomento Industrial Private Limited,
Having its office at Villa Flores da Silva, Erasmo Carvalho Street,
Margao, Goa-403601.

Represented by its Director,
Mr. Francisco Lume Pereira resident of Verna-Goa

.... Petitioner

Versus

1. State of Goa, through its Chief Secretary, having office at Secretariat, Porvorim-Goa.
2. The Director of Mines & Geology, Government of Goa,

having office at Menezes Braganza
Institute, Gr. Floor, Panaji-Goa.

3. Sub-Registrar of Dharbondora,
Dharbondora Taluka, Office of
Sub-Registrar of Dharbondora,
Dharbondora-Goa. ... Respondents

**WITH
WRIT PETITION NO.348 OF 2015**

Smt. Shashikala Kakodkar,
D.B. Nandodkar & Sons Pvt.
Ltd., Second Floor, Atmaram
Commercial Complex, Petitioner
Dr. A.B. Road, Panaji, Goa.

Versus

1. State of Goa, through its
Chief Secretary, having office
at Secretariat, Porvorim,
Bardez-Goa.
2. Director of Mines &
Geology, Government of
Goa, Directorate of Mines &
Geology, Institute Menezes,
Braganza, Panaji-Goa.
3. The Sub-Registrar of Bicholim,
Bicholim Taluka, Office of
Sub-Registrar, Bicholim,
Bicholim-Goa. ... Respondents

**WITH
WRIT PETITION NO.264 OF 2015**

1. Rajaram Bandekar (Sirigao)
Mines Pvt. Ltd. A Company set
up under, the Companies Act, 1956,

with its Registered Office at 601,
6th floor, Dr. Ozler Forum, Near
St. Andrews Church, Vasco-Da-Gama,
Goa 403802 by its duly authorised
General Manager, Mr. Felix Fernandes
Major in age

2. Mr. Narayan R. Bandekar,
Major in age, Shareholder &
Managing Director of the Petitioner No.1
Company residing at Bandekar Mansion,
Vasco, Goa 403711 Petitioners

Versus

1. State of Goa,
by its Chief Secretary,
Secretariat, Porvorim-Goa 403521
2. Director of Mines &
Geology, Government of
Goa, Directorate of Mines &
Geology, Menezes Braganza
Institute, Panaji-Goa 403 001
3. Sub-Registrar of Bicholim,
Bicholim Taluka, Office of
Sub-Registrar of Bicholim,
Bicholim-Goa. ... Respondents

**WITH
WRIT PETITION NO.335 OF 2015**

1. Madachem Bat Mines Private Limited,
a Company registered under the Companies
Act, 1956, with its Registered Office at
Suvarn Bandekar building, Swatantra Path,
Vasco-Da-Gama, Goa, 4030802, represen-
ted
herein by Shri. Santosh Vishnu Mahale,

Son of Vishnu S. Mahale, major, married,
residing at House No.236/4, Jetty Harbour,
Mormugao Goa, Authorised Representative
of the Company

2. Mr. Suvarn Rajaram Bandekar,
son of late Rajaram Bandekar,
Major in age, Indian National, Married,
Businessman, Managing Director
of the Petitioner No.1, Company
residing at 'Raj-Tara', 1st Floor,
F.L.Gomes Road, Vasco-Da-Gama, Petitioners
Goa 403 802

Versus

1. State of Goa,
through its Chief Secretary,
Secretariat, Porvorim-Goa 403521
2. Director of Mines &
Geology, Government of
Goa, Directorate of Mines &
Geology, Menezes Braganza
Institute, Panaji-Goa 403 001
3. Sub-Registrar of Bicholim,
Bicholim Taluka, Office of
Sub-Registrar of Bicholim,
Bicholim-Goa. ... Respondents

**WITH
WRIT PETITION NO.231 OF 2015**

1. V.M. Salgaocar and brother Private Limited,
A Company set up under the Companies
Act,1956, with its Registered office at
Salgaocar House, Off Dr. Francisco Luis
Gomes Road, Vasco-Da-Gama, Goa – 403
802, by its duly authorised Dy. General
Manager-Legal, Mr. Ashwyn Kumar R.
Nayak, Major in age

2. Mr/ Shivanand V. Salgaoncar,
Major in age,
Shareholder & Managing Director of the
Petitioner No.1 Company, residing at "Hira.... Petitioners
Vihar", Airport Road, Chicalim, Goa – 403
711

Versus

1. State of Goa,
through its Chief Secretary,
Secretariat, Porvorim-Goa 403521
2. Director of Mines &
Geology, Government of
Goa, Directorate of Mines &
Geology, Institute Menezes Braganza,
Panaji-Goa 403 001
3. Sub-Registrar of Bicholim,
Bicholim Taluka, Office of
Sub-Registrar of Bicholim,
Bicholim-Goa.
4. Sub-Registrar of Sattari,
Sattari Taluka,
Office of Sub-Registrar of Sattari,
Sattari- Goa.
5. Sub-Registar of Dharbandora,
Dharbandora Taluka,
Office of Sub-Registrar of Dharbandora,
Dharbandora – Goa. ... Respondents

**WITH
WRIT PETITION NO.334 OF 2015**

1. Bandekar Brothers Private Limited,
a Company registered under the

Companies Act, 1956, with its
Registered Office at Suvarn Bandekar
Building, Swatantra Path, Vasco-Da-Gama,
Goa, 403802, represented herein by
Shri. Santosh Vishnu Mahale,
Son of Vishnu S. Mahale, major, married,
residing at House No.236/4, Jetty Harbour,
Mormugao Goa, Authorised Representative
of the Company

2. Mr. Suvarn Rajaram Bandekar,
son of late Rajaram Bandekar,
Major in age, Indian National, Married,
Businessman, Managing Director
of the Petitioner No.1, Company
residing at 'Raj-Tara', 1st Floor,
F.L. Gomes Road, Vasco-Da-Gama,
Goa 403 802 Petitioners

Versus

1. State of Goa,
through its Chief Secretary,
Secretariat, Porvorim-Goa 403521
 2. Director of Mines &
Geology, Government of
Goa, Directorate of Mines &
Geology, Menezes Braganza
Institute, Panaji-Goa 403 001
 3. Sub-Registrar of Bicholim,
Bicholim Taluka, Office of
Sub-Registrar of Bicholim,
Bicholim-Goa.

**WITH
WRIT PETITION NO.370 OF 2015**

M/S. Eyestar Finance and Leasing Pvt. Ltd.,

A company incorporated under the Indian Companies Act, 1956, having its registered office at F-1, 1st floor, Oceanic Apartments, Behind hanuman Temple, Miramar, Panaji Goa, represented by its Director, Mr. Apoorva Misra, son of Late Kailash Nath Misra, resident of Mapusa, Goa. Petitioner

Versus

1. State of Goa,
through its Chief Secretary,
having office at Secretariat,
Porvorim-Goa
2. The Director of Mines &
Geology, Government of
Goa, having office at
Ground Floor, Panaji-Goa
3. The Sub-Registrar of Dharbandora,
Taluka, Dharbandora-Goa, Office of
Sub-Registrar, Dharbandora-Goa. ... Respondents

**WITH
WRIT PETITION NO.350 OF 2015**

Sociedade Timblo Irmaos Limitada,
Represented by, Sociedade de
Fomento Industrial Private Limited,
Having its office at Villa Flores da
Silva, Erasmo Carvalho Street,
Margao, Goa-403601.
Represented by its Director,
Mr. Francisco Lume Pereira
Resident of Verna-Salcete, Goa Petitioner

Versus

1. State of Goa, through its
Chief Secretary, having office
at Secretariat, Porvorim-Goa.

2. The Director of Mines & Geology, Government of Goa, having office Ground Floor, Panaji-Goa.
3. The Sub-Registrar of Bicholim, Taluka, Bicholim-Goa, Office of Sub-Registrar, Bicholim-Goa, ... Respondents

**WITH
WRIT PETITION NO.361 OF 2015**

1. M/S. Pandurang Timblo Industries, Subhash Timblo, Bhawan, Isidorio Baptista Road, P.O. 242, Margao, 403 601, represented by Shri Prakash Movya, major of age, Indian National, having address at the above address.
2. Sociedade Timblo Irmaos Limitade, a Commercial Society, duly registered under No. 62 in terms of law of 11.04.1901, having its registered office at Subhash Timblo Bhawan, Isidorio Baptista Road, P.O. 242, Margao, Goa, through its authorised signatory Shri by Shri Prakash Movya, major of age, Indian National, having address at the above address PetitionerS

Versus

1. State of Goa, through its Chief Secretary, Secretariat, Porvorim-Goa 403 521
2. Director of Mines & Geology, Government of Goa, Directorate of Mines and Geology,

Menezes Braganza Institute,
Panaji, Goa 403 001

3. The Sub-Registrar of Dharbandora
Having Office at Dharbandora Goa, ... Respondents

**WITH
WRIT PETITION NO.351 OF 2015**

M/S. N.S. Narvekar Minerals,
a duly registered Partnership
Firm, constituted by the legal
heirs of late Shri N.S. Narvekar,
through its Partner, SMT MAYA
SHRIKRISHNA T. POKLE, wife
of Mr. Shrikrishna Pokle, having
office at Bombi Niwas, Mar.... Goa. Petitioner

Versus

1. State of Goa, through its
Chief Secretary, having office
at Secretariat, Porvorim-Goa.
2. The Director of Mines &
Geology, Government of
Goa, having office at
Ground Floor, Panaji-Goa.
3. The Sub-Registrar of Sanguem
Taluka, Sanguem-Goa, Office of
Sub-Registrar, Sanguem-Goa. ... Respondents

**WITH
WRIT PETITION NO.243 OF 2015**

M/s. Lithoferro, a partnership firm
duly registered under the Partnership Act, 1932,
having its Registered office at Khalap Mansion,
Mapusa, Bardez, Goa, represented herein by its
Partner, Shri Kaustubh Sawakar,
major of age, son of late Vinayak Sawkar,

businessman, Mapusa, Goa. Petitioner

Versus

1. State of Goa, through its Chief Secretary, having office at Secretariat, Porvorim-Goa.
2. The Director of Mines & Geology, Government of Goa, having office at Ground Floor, Panaji-Goa.
3. The Sub-Registrar of Bicholim, Bicholim Taluka, Office of Sub-Registrar at Bicholim, Bicholim Taluka, Bicholim- Goa. ... Respondents

**WITH
WRIT PETITION NO.262 OF 2015**

M/s. Chowgule and Company Private Ltd., A Company duly registered under the Companies Act, 1956, with its Registered Office at 'Chowgule House', Mormugao Harbour, (Goa)- Pin Code No. 403 893*, represented by its duly Constituted Attorney Mr. Rama alias Ramesh Bhima Bilguche, son of Mr. Bhima Bilguche, aged about 63 years, resident of A-1, 'Anukul' Vidyanagar(Zuarinagar) , Goa- 402 726, Executive Director and Company Secretary of the Petitioner Company. Petitioner

Versus

1. State of Goa, through the Secretary (Mines), Government of Goa, with his Office at the Secretariat Complex, Porvorim, Bardez- Goa.*
2. The Director of Mines & Geology,

Directorate of Mines and Geology,
Government of Goa, Ground Floor, Institute
of Menezes Braganza, Panaji- Goa. Respondents

**WITH
WRIT PETITION NO.263 OF 2015**

Vijay Chowgule, Legal Heir of late
V. D. Chowgule, Chowgule House,
Mormugao Harbour, Goa-403 803
represented by its duly Constituted
Attorney Mr. Rama alias Ramesh
Bhima Bilguche, son of Mr. Bhima
Bilguche, aged about 63 years,
resident of A-1, 'Anukul'
Vidyanagar (Zuarinagar),
Goa - 402726. Petitioner

Versus

1. The State of Goa, through the
Secretary (Mines), Government of Goa,
with his Office at the Secretariat Complex,
Porvorim, Bardez-Goa.
2. Director of Mines & Geology,
Directorate of Mines & Geology,
Government of Goa, Ground Floor,
Institute Menezes Braganza, Panaji- Goa. Respondents

**WITH
WRIT PETITION NO.240 OF 2015**

Smt. Kunda Raghuvir Gharse,
wife of late Raghuvir Sinai Gharse,
Near Municipality, P. O. Box 204,
Margao, Goa 403 601. Petitioner

Versus

1. State of Goa, by its Chief Secretary,
Secretariat, Porvorim, Goa 403 521.
 2. Director of Mines & Geology,
Government of Goa, Directorate of
Mines & Geology, Institute Menezes
Braganza, Panaji, Goa 403 001.
 3. Sub-Registrar of Bicholim,
Bicholim Taluka, Office of
Sub-Registrar of Bicholim,
Bicholim Goa. Respondents

**WITH
WRIT PETITION NO.352 OF 2015**

M/S. N. S. Narvekar Minerals,
a duly registered Partnership Firm,
constituted by the legal heirs of late
Shri N.S. Narvekar, through its Partner,
SMT MAYA SHRIKRISHNA T. POKLE,
wife of Mr Shrikrishna Pokle,
having office at Bombi Niwas,
Margao-Goa. Petitioner

Versus

1. State of Goa, through its Chief Secretary, having office at Secretariat, Porvorim-Goa.
 2. The Director of Mines & Geology, Government of Goa, having office at Ground Floor, Panaji-Goa.
 3. The Sub-Registrar of Sanguem Taluka, Sanguem-Goa, Office of Sub-Registrar, Sanguem-Goa.

**WITH
WRIT PETITION NO.346 OF 2015**

G.N.Agrawal
Indian Inhabitant,
having office at Anand Bhavan,
Old Station Road, Margao,
Goa 403601 through its
Power of Attorney Devidas Kudchadkar
Resident of house no.592 Chowk Wada,
Curchorem – Goa.

.... Petitioner

Versus

1. State of Goa, through its
Chief Secretary, having office
at Secretariat, Porvorim-Goa.
 2. The Director of Mines & Geology,
Government of Goa, having office at
Ground Floor, Panaji-Goa.
 3. The Sub-Registrar of Quepem Taluka,
Quepem-Goa, Office of Sub-Registrar,
Quepem-Goa.
- Respondents

**WITH
WRIT PETITION NO.244 OF 2015**

1. Ms [Sesa Sterlite Limited]
VEDANTA LIMITED
(amendment carried
out as per order dtd.09.09.2015 in
MCA No.354/15 in WP No.244/15
dtd. 20.10.15)
(iron Ore Division) A Company
incorporated under the Provisions
of the Companies Act, 1956, having

its Office at Sesa Ghor, 20 EDC Complex,
Patto Panaji Goa- 403001, through
Its Dy. Chief operating officer
Mr. Sauvick Mazumdar, Son of
B. N. Mazumder, 41 years of age,
Service, resident of Campal, Panaji- Goa.

2. Mr. S. Suresh,
Son of N. A. Subramaniam,
40 years of age, PetitionerS
Service, resident of
Adwalparkar Shelter Caranzalem Goa
Shareholder of Ms/Sesa Sterlite Ltd.

Versus

1. State of Goa, through its
Chief Secretary, Secretariat,
Porvorim, Goa 403 521.
2. Director of Mines & Geology,
Government of Goa, Directorate of
Mines & Geology, Menezes Braganza
Institute, Panaji, Goa 403 001.
3. Sub Registrar of Dharbandora
Having its office at Dharbandora Goa. ... Respondents
4. Sub Registrar of Sattari,
Having its office at Sattari Goa.
5. Sub Registrar of Bicholim,
Having its office at Bicholim Goa.

**WITH
WRIT PETITION NO.117 OF 2024**

1. Shri.Gangadhar Narsingdas Agrawal,
Son of Late Shri Narsingdas Agrawal,
aged 89 years, married, industrialist,
Indian national, having Office at
Anand Bhavan, Old Station Road,

Margao Goa 403 601, Through his power of attorney, Shri Chandrakumar Huilgol, son of late Ramarao Huilgol, aged 73 years, Indian National, resident of Sinquetim, Navelim, Salcete Goa. Petitioners

Verses

1. State of Goa, through its Chief Secretary, having office at Secretariat, Porvorim-Goa.
2. The Director of Mines & Geology, Government of Goa, having office at Ground Floor, Institute Menezes Braganza, Panaji-Goa.
3. The Sub Registrar of Dharbandora Dharbandora Taluka, Office of the Sub Registrar, Dharbandora, Goa. ... Respondents

Mr. Parag Rao, along with Ms. Linette Rodrigues, Mr. Akhil Parrikar, Ms. Sowmya Drago and Mr. Ajay Menon, Advocates for the Petitioner in WP 206/2015, WP 370/2015, WP 352/2015, WP 243/2015, WP 351/2015.

Mr. Subodh S. Kantak, Sr. Advocate, along with Mr. Abhijeet Kamat, Mr. Preetam Talaunikar, Ms. Neha Kholkar, Mr. Kher Simoes, Ms. Saicha Dessai, Advocates for the Petitioner in WP 208/2015, WP 207/2015, WP 117/2015, WP 350/2015, WP 346/2015.

Mr. Parikshit Sawant with Mr. Ajay Borkar, Advocate for Petitioner in WP 348/2015, WP 240/2015.

Mr. A.F. Diniz, Sr. Advocate, along with Mr. Ryan Menezes, Ms. Gina Almeida, Mr. Nigel Fernandes, Ms. Stephanie Alvares, Advocates for the Petitioner in WP 264/2015.

Mr. A.F. Diniz, Sr. Advocate, along with Mr. Ryan Menezes, Ms. Gina Almeida, Mr. Nigel Fernandes, Ms. Stephanie Alvares, Ms. Neha Shirodkar, Advocates for the Petitioner in WP 231/2015.

Mr. Subodh S. Kantak, Sr. Advocate, along with Mr. Abhijit Gosavi, Ms. Krupa Naik, Mr. Guruprasad Naik, Mr. G. Karekar, Advocate for the Petitioner in WP 244/2015.

Mr. S.D. Lotlikar, Sr. Advocate, along with Ms. Sailee Kenny, Mr. Terence Sequeira, Mr. Jayant Karn, Advocates for the Petitioner in WP 262/2015, WP 263/2015.

Mr. Vledson Braganza with Mr. Sagar Rivankar, Advocates for the Petitioner in WP 335/2015, WP 334/2015.

Mr. Venkatesh R. Dhond, Sr. Advocate, along with Mr. Rohan Kerkar with Mr. Manish Salkar Government Advocate and Mr. Pravin Faldessai, Mr. Deep Shirodkar, Mr. Tukaram Gawas, Mr. Geetesh Shetye, Mr. Prashil Arolkar, Mr. Suhas Parab, Ms. Akshata Bhat, Mr. Vishwadh Sardessai, Ms. Maria Correia, Ms. Sapna Mordekar, Mr. Neehal Vernekar, Ms. Susan Linhares, Mr. S. Priolkar, Ms. Amira Razaq, Mr. Shivdutt Munj, Mr. S. Samant, Ms. Sulekha Kamat, Additional Government Advocates for the Respondent State in WP 206/2015, WP 346/2015, WP 240/2015, WP 263/2015, WP 351/2015, WP 208/2015, WP 207/2015, WP 348/2015, WP 264/2015, WP 231/2015, WP 335/2015, WP 334/2015, WP 370/2015, WP 117/2024, WP 244/2015, WP 350/2015, WP 361/2015, WP 262/2015, WP 352/2015, WP 243/2015.

CORAM:

**BHARAT P. DESHPANDE
& VALMIKI MENEZES,JJ**

RESERVED ON:

12th April, 2024

PRONOUNCED ON:

12th July, 2024.

JUDGMENT : (Per BHARAT P. DESHPANDE,J)

INTRODUCTION

1. All the above petitions raising same/similar grounds thereby challenging the Notification issued by Government of Government dated 01/02/2014 and the communication thereafter made to the respective Petitioners directing them to register the lease deeds, are taken up for final disposal with this common judgment with the consent of the respective parties.
2. The lead petition is Writ Petition No.244 of 2015 is considered for the purpose of the facts as well as the grounds raised therein.
3. In most of the present petitions, the petitioners are the erstwhile mining concession holders during the Portuguese regime. After liberation of Goa, such mining concessions continued and subsequently The Goa, Daman and Diu (Laws) Regulation Act, 1962 came into force by which various Acts specified therein including The Mines and Minerals (Development and Regulation) Act, 1957 (MMRD Act, for short) was extended to Goa, Daman and Diu. Somewhere in the year 1987 Act was passed known as The Goa, Daman and Diu Mining Concessions (Abolition and Declaration as Mining Leases) Act, 1987. In this Act mining concessions were abolished and declared as deemed mining lease under the provisions

of MMRD Act 1957, wherein the provisions for renewal of deemed mining lease were considered.

4. The Petitioners filed the first renewal application in prescribed Form J. In the meanwhile, some petitions were filed since no decisions were taken about the renewal and by interim orders the mining activities continued. Somewhere in the year 1990 the Government executed a mining lease deed in Form K. In the meanwhile, challenges were raised with regard to renewal of such mining leases and matters also went to the Apex Court wherein mining activities were continued. Subsequently, the Petitioners filed a second renewal application in the prescribed Form J somewhere in the year 2006 and more specifically before the expiry of the first renewal of the lease.

5. Somewhere in the year 2012, the State of Goa enacted the Indian Stamp Goa Amendment 2012 thereby inserting Section 3A which deals with payment of stamp duty for the purpose of executing mining lease deed.

6. A petition was filed before the Apex Court and by interim orders dated 15/10/2012 the mining operations in the State of Goa were suspended. However, in view of the Goa amendment to the

Indian Stamp Act, the Government issued demand notice informing the Petitioner for payment of requisite stamp duty. The Petitioners paid such stamp duty however somewhere in the month of May 2013 Government of Goa amended the table of fees in Article I to IV which came to be substituted by way of Notification dated 31/05/2013. By this Notification the Government declared that registration fee has to be paid as per the amended table of fees. By that time an order was passed by the Supreme Court observing that the State Government has power and discretion to renew the mining lease after specifying the statutory prerequisite, in the interest of mineral development. As the execution of mining lease deed for the second renewal period was delayed despite payment of the stamp duty, some of the Petitioners approached this Court by filing writ petitions seeking the relief of execution of mining lease deed (second renewal) for which stamp duty has been collected by the State Government and direct the State Government to decide upon the remaining pending applications. Vide order dated 13/08/2014, this Court in such petitions directed the Government to execute mining lease deed in favour of the mine owners who had already paid stamp duty and further directed the State to decide the remaining pending applications within a stipulated time. In pursuance of such orders

passed by this Court, somewhere in the year 2014-2015, the Government issued second renewal orders in favour of the Petitioners for the period from 2007 to 2027.

7. Vide Notification dated 01/12/2014, the Government of Goa added/amended the table of fees in the Registration Act by virtue of which the registration of the document is required to be executed by paying fees in respect of mining lease deed. By this Notification, the fees for registration of the mining lease deed was made equivalent to the stamp duty payable or the document thereof.

8. The Petitioners conveyed its acceptance for the second renewal order but by putting on record certain clarifications. Accordingly, respondent No.2 executed mining lease deeds in Form K in favour of the Petitioners. Immediately thereafter a letter/communication from respondent No.2 was received by the Petitioners calling upon them to register the mining lease deeds with the Registrars concerned.

9. It is the main contention of the Petitioners that such communication directing the Petitioners to register the mining lease deeds with the concerned Registrar by paying registration fees which was subsequently reduced to 5% of the stamp duty, is ultra virus to

Indian Registration Act since such leases wherein Government is party are exempted from registration. The challenge in these petitions though against such communications and the amendments to the schedule of fees, the prayers in the lead petition reads thus :

- A) This Hon'ble Court be pleased to issue a writ of certiorari or a writ in the nature of certiorari or any other appropriate writ, order or direction, quashing and setting aside the Impugned communication dated 09/12/2014:*
- (B) This Hon'ble Court be pleased to issue a writ of certiorari or a writ in the nature of certiorari or any other appropriate writ, order or direction, quashing and setting aside the Impugned Notification dated 01/12/2014:*
- (C) This Hon'ble Court be pleased to issue a declaration that the mining lease deed dated 08/12/2014 in favour of the Petitioner by the Government of Goa is exempt from registration.*
- (D) This Hon'ble Court be pleased to grant stay on the operation and implementation of the Impugned communication dated 09/12/2014 and the impugned Notification dated 01/12/2014, pending the hearing and final disposal of this Petition;*

In the alternate,

This Hon'ble Court be pleased to extend the period for presentation of the mining lease deed for registration during the pendency and till disposal of the present petition.

(E) *For ad-interim ex-parte relief in terms of Prayer Clause (A), (B) and (D) above;*

(F) *For such other and further reliefs as deemed fit and proper in the facts and circumstances of the case be passed.*

(DD) For appropriate writ, order or direction quashing and setting aside the Impugned Notification II dated 14/05/2015 (ANNEXURE L) to the Petition.

(DDD) For a Writ of Mandamus or any other appropriate writ, direction But or order under Article 226 of the Constitution of India, commanding the Respondents to forthwith refund to the Petitioner, the Registration Fee of Rs.2,00,00,310/- (Rupees Two Crores Three Hundred & Ten Only) along with interest thereon at the bank rate, from the date of payment, i.e. from 18.05.2015 to till full refund."

10. Some of the petitions deal with either second or third renewal of the mining renewal wherein they were directed to get the lease deed registered with the concerned Registrars by paying the registration fee as provided under the schedule of fees amended by

the State of Goa. The principal challenge in these petitions are (a) since mining leases having the character of lease executed by Government of immovable property or interest in immovable property as referred in Indian Registration Act and more specifically Section 90, is exempted from registration (b) Mining Concession Rules 1960 and more particularly Rule 31(2) nowhere direct or refer to registration of a document under the general law i.e. the Registration Act, however, it refers to formal registration for the purpose of maintaining records in the statutory Form M under Rule 40 which cannot override the exemption granted under Section 90 of the Registration Act. (c) Fee which the Government is now trying to charge, is not actually fee since there is no quid pro quo offered or conferred upon the Petitioners and hence the character of such fee is tax without authority of law.

SUBMISSIONS ON BEHALF OF THE PETITIONERS:

11. Mr. Kantak basically submitted that while executing lease deeds, the stamp duties were paid by the respective Petitioners however the State is now asking the Petitioners to compulsorily register such lease documents by paying registration fee which is amended as 5% of the stamp duty. He submits that such registration

fee was initially levied at 100% of the stamp duty however it is reduced by the State Government to 5% which is under challenge.

12. Mr.Kantak would submit that Section 17 of the Registration Act in part III provides that the documents of which registration is compulsory. However, he submits that sub-section 1(b) r/w sub-section 2(vii) would clearly provides that a grant of immovable property by the Government is exempted.

13. Mr. Kantak would then submit that Section 90 of the Registration Act deals with exemption of certain documents executed by or in favour of the Government. The Goa amendment in the year 1968 clearly shows that such provision is applicable to the leases by Government of immovable properties or any interest in the immovable property. Mr. Kantak would submit that since there is provision regarding deemed registration of such documents as provided under Section 90(2), there is no necessity of separate or independent registration of the mining leases and that too by paying registration fees which comes in lakhs. It is his contention that when there is a deemed registration of such documents as provided under Section 90(2), the letter issued by Government of Goa insisting the

Petitioner to register the mining lease but with the respective Registrars is clearly unwarranted and against the provisions of law.

14. Mr. Kantak would then submit that Section 49 of the Registration Act would not operate against the mining lease documents/deeds of the Petitioners since such deeds are already deemed to have been registered and therefore State or the respondents cannot be allowed to take advantage of non-registration and effect as per Section 49 of the said Act.

15. Mr. Kantak would then submit that vide letter dated 06/01/2015, the Petitioners were directed to register the mining lease deeds only with an intention to collect registration fees, which is impermissible or illegal since such documents are already deemed to have been registered. Besides he submits that the Petitioners are challenging such notices dated 05/01/2015 whereby the Petitioners have been directed to register the mining lease deeds only with an intention to collect 5% registration fees without any authority of law.

16. Mr. Kantak would then submit that a mining lease is only an interest in the immovable property and such interest is covered under Section 90(2) of the Registration Act as a deemed registration. The State cannot ask the Petitioners to register a document which is

already considered as having deemed registration for the purpose of its taking effect to.

17. Mr. Kantak would submit that the Government by amending the table of fees, is trying to collect 5% of registration fees on the stamp duty without naming it as a tax. It is his contention that the Government is not entitled to levy tax by way of 5% of registration of a document and if it is considered as fees, there is no quid pro quo or services rendered to the Petitioners.

18. Mr. Kantak would then submit that the reply filed on behalf of Respondent No.2 needs to be taken into consideration as the same is totally contrary to the arguments advanced on behalf of the Government. It is his contention that since the document is exempted from registration or what is considered as deemed registration, it is beyond the powers of the Government asking the Petitioners to register the document by paying 5% fees.

19. Mr. Diniz would submit that Section 78 of the Registration Act deals with the fees to be fixed by the State Government by preparing the table of fees for the registration of the documents etc. He also referred to the stamp duty under the Indian Stamp Act and claimed that there is a separate category for mining leases and the purpose

behind it is clear. He submits that the fees as levied by the Government by amending the table of fees is clearly illegal as there is no quid pro quo or any benefit to the Petitioners.

20. Mr. Diniz would submit that for the purpose of registration of documents other than mining lease deed is the same and there is no special fee for such registration in respect of the documents which are compulsorily registered. He submits that by amending the table of fees and directing the Petitioners to pay 5% of registration fee on the same stamp duty, the Government is clearly discriminating against the Petitioner from every party whose documents are considered for registration. In this respect, he referred to grounds K and L in Writ Petition No.231 of 2015 and claimed that the fees as claimed by the Government are grossly disproportionate and hence against Article 14 of the Constitution.

21. While referring to the reply of the State Government, Mr. Diniz would submit that there is no broad correlation between the fees charged earlier and now and thus the action of the Government needs to be curbed. He would submit that there is no extra expenditure which the Government has to spend while registering the document i.e. the mining lease deed since the entire

infrastructure, the man power, offices, equipment are already established and such expenditure is borne by the Government from its resources. Thus, the question of levy of further 5% of registration fees and asking the Petitioner to register the mining lease itself is clearly beyond the powers.

22. Mr. Diniz would submit that the stamp duty levied on such documents is clearly a tax. Accordingly, 5% over the stamp duty in the name of fee cannot be considered as fee but it is again a tax which violates Article 260 of the Constitution. Mr. Diniz while supporting the contentions raised by Mr. Kantak would submit that the Government is charging tax and not the fee and therefore it is beyond their competence.

23. Mr. P. Rao while supporting the contentions of Mr. Kantak and Mr. Diniz reiterated that there is no broad correlation to the fees and that the State Government is not entitled to charge such fees as it is clearly a tax.

24. Mr. Sawant appearing for some of the Petitioners adopted the submissions of the learned Senior Counsel Mr. Kantak, Mr. Diniz and Mr. Parag Rao.

25. Mr. Lotlikar by adopting the arguments of other learned Counsel would submit that the deemed registration would clearly debar the Government and its departments from insisting on registration of documents. He would submit that the Rule 31 of MMDR is not a substantive legislature so as to consider registration as compulsory. It only refers to the commencement date and when Section 90(2) provide deemed registration, the date of commencement has to be considered from the date of execution of documents.

SUBMISSIONS OF THE RESPONDENTS-STATE:

26. Mr. Dhond appearing for the State would submit that looking to the language of Section 90(1) of the Registration Act, it clearly provides that such exemption is only with respect to the provisions of the Indian Registration Act and the repealed Act and not covering the registration which is required under the other Acts and more specifically MMDR Act. His contention is that with regard to the exemption mentioned in the Registration Act, is restricted to only under the said Act and not under other Acts. He would submit that in case a document is required to be registered under other Acts, then Section 90 has no application. In this respect he invited the

attention of this Court to Rule 31 and the provisions of MMDR Act. He also submits that Section 90(2) of the Registration Act referred by the Petitioners speak only about Sections 48 and 49 of the Registration Act whereas the documents in question are not covered under Section 49 of the Act but mining leases are covered under the MMDR Act which clearly provide that unless the document is registered, it would not have effect in the eyes of law.

27. Mr. Dhond would submit that the Registration Act is the central legislation wherein Section 78 deals with the powers of State Government to prepare a table for the purpose of fixing fees for the purpose of registration. According to him, such power given to the State under Section 78 is to levy and accordingly the State amended the table of fees under the State Act. Mr. Dhond would submit that Section 78 itself delegates powers to the State by the Centre to levy a fee for the purpose of registration of documents. Thus according to State under Section 78 of the Registration Act, no further legislation or order is required.

28. Mr. Dhond would submit that the Registration Act does not direct that the lease to be compulsorily registered however according to him the mining lease is clearly covered under the MMDR Act and

Rules which provide that unless such lease is registered, it will have no effect in the eyes of law and accordingly Section 90 of the Registration Act will have no application.

29. Mr. Dhond would submit that admittedly the minerals found in the lease area is the property of the State. Any documents /contract executed by two parties is binding only on those parties however for the purpose of MMDR Act and the document to come into effect , registration of it is must. In this respect Mr. Dhond placed reliance on Rules framed by the Central Government and more particularly Rule 31 wherein it is contended that the registration is compulsory and it is the condition precedent for the purpose of coming into effect the mining lease deed. In other words, Mr. Dhond would submit that unless the mining lease deed is registered, it will not come into operation. He would submit that it is for the Petitioner to take a call as to whether the mining lease deed is to be registered so as to consider it in operation. He submits that it was made clear to the respective petitioners that such documents require registration and in spite of that such mining leases were executed with the Government. Unless such documents are registered with the respective Registrars, it cannot come into operation. He submits that execution of such documents by the

parties is not enough however it has to be registered as provided under the Registration Act and the Rule therein. In this respect he would submit that Section 31 of the Registration Act clearly provides that in ordinary cases registration or deposit of documents under the said Act shall be made only at office or the Officer authorised to accept the same for registration or deposit.

30. Mr. Dhond would further submits that the provisions of Section 90 of the Registration Act cannot be read as omnibus but it only exempt certain documents from registration under the said Act alone. It is his contention that Section 90(2) is only considered deemed registration for the purpose of Sections 48 and 49 of that Act. He submits that the effect of non registration under Section 48 invalidates the document under the said Act only what is provided under Section 17 under which the documents are compulsorily required to be registered. According to him, the mining lease itself would not be covered under Section 48 and 49 r/w. Section 90 of the Registration Act. He submits that relaxation under Section 90 is only to dilute certain identified provisions which are found mentioned in Section 48 and 49. According to him, Section 48 deals with compulsory registration of the documents which are required to be registered as per Section 17 of the said Act and of the Transfer

of Property Act. Whereas registration of a document as provided under MMDR Act cannot be defeated by Section 90 of the Registration Act.

31. Mr. Dhond would then submit that Section 47 of the Registration Act deals with time from which registered documents operate. However, according to him, Section 47 is not found mentioned in the exemption clause Section 90(2).

32. Mr. Dhond would then submit that the contention that it is not a fee and tax has no substance at all. He submits that the pith and substance has to be taken into account as MMDR Act is a special legislation whereas Registration Act is a general law. He submits that the provisions of special laws always prevail over the general law. He submits that the levy of 5% is in accordance with law and therefore the contentions raised by the petitioners needs to be discarded.

33. In rejoinder, the learned Counsel appearing for the Petitioners would submit that the affidavits filed by the concerned Officer of the Respondent are in variance with the arguments advanced. It is their contention that the defence raised is that it is a fee and not a tax. It is further submitted that levy of fee must be on the ground of quid

pro quo and if no services are given to the Petitioners, the same has to be considered as illegal and violative of the provisions.

34. The following citations are referred by the Petitioners and the respondents:

Sri Tarkeshwar Sio Thakur Jiu vs. Dar Dass Dey & Co. and Ors., (1979) 3 SCC 106, Associated Cement Company Ltd. & Ors. vs. The Government of Andhra Pradesh & Ors., MANU/AP/0139/1984, Rambad Patila Shramik Sahyog Samiti Limited & Anr 30-35 (in 8881) Chitrawali Sales Pvt. Ltd. (in 12966) vs. State of Bihar & Anr., 2007 SCC OnLine Pat 753, State of H.P. & Ors. vs. Gujarat Ambuja Cement Ltd. & Anr., (2005) 6 SCC 499, Kesora M. Cement vs. The Government of India & Ors., MANU/DE/0089/1974, Power Grid Corporation of India Ltd. vs. State of Madhya Pradesh & Anr., 2015 SCC OnLine Chh 634, M. Venugopal vs. Divisional Manager, (1994) 2 SCC 323, Calcutta Municipal Corporation & Others Vs. Shrey Mercantile (P) Ltd. & Others, (2005) 4 SCC 245, Vijayalashmi Rice Mill & Others Vs. Commercial Tax Officer, Palakol & Others,

2006 AIR (SC) 2897, A.P. Paper Mills Ltd. Vs. Govt. Of A.P. & Another, (2000) 8 SCC 167, State of U.P & Others Vs. Vam Organic Chemicals Ltd. & Another, (2004) 1 SCC 225, Maneklal Mansukhbhai Vs. The Suryapur Mills Co. Ltd., Bombay Series Vol. LII 477, Sesa Sterlite Ltd. Vs. State of Goa, 2024 SCC OnLine Bom 90 and State of W.B. Vs. Kesoram Industries Ltd. & Others, (2004) 10 SCC 201.

DISCUSSIONS AND CONCLUSIONS

35. Rival contentions fall for determination.
36. The main contention raised on behalf of the Petitioners basically revolved upon the provisions of Registration Act and more specifically Section 90 thereby claiming that the grant or document of lease executed by the Government is exempted from registration, and thus, directing to register it by paying the registration fees of 5% as shown in the schedule of fees amended by the Goa Government is illegal. In other words it is their contention that the mining lease deed is exempted from registration.
37. The second contention is that as per the Rules of Mining Concession Rules, 1960, it no where refer registration of a document

under the General Law i.e. the Registration Act however it only refers to registration for the purpose of maintaining the record in the statutory format as provided under the Rules i.e. Form No.M and therefore it has to be read with Section 90 of the Registration Act as deemed to have been registered.

38. Thirdly it is the contention of the Petitioner that registration fee of 5% as amended in the table of fees is in the form of a tax, without the authority of law. Even if it is considered as fee, there is no quid pro quo offer to the Petitioners for charging such fees.

39. The Indian Registration Act 1908 was made applicable to the State of Goa vide Notification published in official gazette dated 29/10/1965. The table of fees was amended vide Notification No. 8-6-2012-LD (Estt.)/2717 published in the official gazette dated 04/12/2014 which reads thus :

Notification

8-6-2012-LD (Estt.)/2717

In exercise of the powers conferred by section 78 of the Registration Act, 1908 (Central Act 16 of 1908), read with section 21 of the General Clauses Act, 1897 (Central Act 10 of 1897) and all other powers enabling it in this behalf, the Government of Goa hereby further amends the Table of

Fees, published in the Government Gazette (supplement), Series I No.31 dated 1-11-1965, as follows, namely:-

In the Table of Fees, after Article IV, the following Article shall be inserted, namely:-

"IVA. For registration of every instrument relating to grant of mining lease or renewal of mining lease, registration fees shall be equivalent to stamp duty payable on such instrument under the Indian Stamp Act, 1899 (Central Act 2 of 1899), as in force in the State of Goa".

This notification shall come into force with immediate effect.

By order and in the name of the Governor of Goa.

*Vinayak R. Kurikar, Under Secretary
(Estt.) (Link Officer)*

Porvorim, 1st December, 2014."

40. By way of above Notification, the Government of Goa amended the table of fees after Article IV by adding Article namely IVA as quoted above. By this amendment the fees for the registration of instruments relating to grant of mining lease or renewal of mining lease, the registration fees were kept equivalent to the stamp duty table of such instruments under the Indian Stamp Act. Thus by the said amendment published on 04/12/2014, the registration fee for

registration of mining leases was equivalent to the stamp duty payable on the said instruments as per the Indian Stamp Act.

41. Subsequently vide Notification dated 12/05/2015 No.8-6-2012-LD(Estt)/998, the Government of Goa further amended Article IVA thereby reducing the registration fees to 5% of the stamp duty paid on such instruments. Above Notification reads thus :

Notification

8-6-2012-LD(Estt.)/998

Read: Notification No.8-6-2012-LD(estt)/2717 dated 1-12-2014, published in Official Gazette, Series I No.36 dated 4-12-2014.

In exercise of the powers conferred by section 78 of the Registration Act, 1908 (Central Act 16 of 1908), read with section 21 of the General Clauses Act, 1897 (Central Act 10 of 1897) and all other powers enabling it in this behalf, the Government of Goa hereby further amends the Table of Fees, published in the Government Gazette (Supplement), Series I No.31 dated 1-11-1965, as follows, namely:-

In the Table of Fees, after Article IVA, the following Article shall be inserted, namely:-

“IVA. For registration of every instrument relating to grant, renewal or transfer of mining lease, registration

fees shall be equivalent to 5% of the stamp duty paid on such instrument, under the Indian Stamp Act, 1899 (Central Act 2 of 1899), as in force in the State of Goa”.

This notification shall come into force from the date of its publication in the Official Gazette.

By order and in the name of the Governor of Goa.

Amul S. Gaunker,

Under Secretary, Law(Estt.)

Porvorim, 12th May, 2015.”

42. Registration Act 1908 empowered the State Government to amend the schedule of fees. Part XIII of the Registration Act deals with of the fees for registration, searches and copies. It specifically empowers the State Government to prepare a table of fees payment for the registration of documents, searching of the registers, for making or granting copies etc. as well as of extra or additional fees payable for other purposes. Section 78 of the Registration Act reads thus :

*“78. Fees to be fixed by State Government.—[***] The [State Government] shall prepare a table of fees payable—*

(a) for the registration of documents;

(b) for searching the registers;

(c) for making or granting copies of reasons, entries or documents, before on or after registration;

*and of extra or additional fees payable—
(d) for every registration under section 30;
(e) for the issue of commissions;
(f) for filing translations;
(g) for attending at private residences;
(h) for the safe custody and return of document; and
(i) for such other matters as appear to the Government necessary to effect the purposes of this Act.”*

43. Thus above provision clearly empowers the State Government to prepare table of fees payable for the purpose of registration of documents etc. In these matter we are concerned only with the registration of the documents i.e. mining lease deed. The Petitioners nowhere challenged the legislative competence of the State Government in amending the schedule of fee. Therefore the question in these petitions is whether amendment of schedule to the registration Act by the State of Goa and inclusion of the lease deed is justified and whether it actually amounts to fees or tax. The Petitioners contended that it is actually a tax under the garb of fee and as such Government is not having any power to impose tax at the registration of documents.

44. Certain provisions of the Registration Act needs to be considered for the purpose of arguments advanced by the respective parties.

45. Section 2 deals with definitions wherein sub-section 6 defines immovable property which reads thus :

“Immovable Property” includes land, buildings, hereditary allowances, rights to ways, lights, ferries, fisheries or any other benefit to arise out of land, and things attached to the earth, or permanently fastened to anything which is attached to the earth, but not standing timber, growing crops nor grass;”

46. Part III of the Registration Act deals with of registrable documents. Section 17 reads thus :

17. Documents of which registration is compulsory.—(1) The following documents shall be registered, if the property to which they relate is situate in a district in which, and if they have been executed on or after the date on which, Act No. XVI of 1864, or the Indian Registration Act, 1866, or the Indian Registration Act, 1871, or the Indian Registration Act, 1877, or this Act came or comes into force, namely:—

- (a) instruments of gift of immovable property;*
- (b) other non-testamentary instruments which purport or operate to create, declare, assign, limit or extinguish, whether in present or in future, any right, title or interest, whether vested or contingent, of the value of one hundred rupees and upwards, to or in immovable property;*
- (c) non-testamentary instruments which acknowledge the receipt or payment of any consideration on account of the creation, declaration, assignment, limitation or extinction of any such right, title or interest; and*
- (d) leases of immovable property from year to year, or for any term exceeding one year, or reserving a yearly rent;*

[(e) non-testamentary instruments transferring or assigning any decree or order of a Court or any award when such decree or order or award purports or operates to create, declare, assign, limit or extinguish, whether in present or in future, any right, title or interest, whether vested or contingent, of the value of one hundred rupees and upwards, to or in immovable property:]

Provided that the [State Government] may, by order published in the 3[Official Gazette], exempt from the operation of this sub-section any lease executed in any district, or part of a district, the terms granted by which do not exceed five years and the annual rents reserved by which do not exceed fifty rupees.

4[(1A) The documents containing contracts to transfer for consideration, any immovable property for the purpose of section 53A of the Transfer of Property Act, 1882 (4 of 1882) shall be registered if they have been executed on or after the commencement of the Registration and Other Related laws (Amendment) Act, 2001 (48 of 2001) and if such documents are not registered on or after such commencement, then, they shall have no effect for the purposes of the said section 53A.]

(2) Nothing in clauses (b) and (c) of sub-section (1) applies to—

(i) any composition deed; or

(ii) any instrument relating to shares in a joint stock Company, notwithstanding that the assets of such Company consist in whole or in part of immovable property; or

(iii) any debenture issued by any such Company and not creating, declaring, assigning, limiting or extinguishing any right, title or interest, to or in immovable property except in so far as it entitles the holder to the security afforded by a registered instrument whereby the Company has mortgaged, conveyed or otherwise

transferred the whole or part of its immovable property or any interest therein to trustees upon trust for the benefit of the holders of such debentures; or

(iv) any endorsement upon or transfer of any debenture issued by any such Company; or

(v) [any document other than the documents specified in sub-section (1A)] not itself creating, declaring, assigning, limiting or extinguishing any right, title or interest of the value of one hundred rupees and upwards to or in immovable property, but merely creating a right to obtain another document which will, when executed, create, declare, assign, limit or extinguish any such right, title or interest; or

(vi) any decree or order of a Court 2[except a decree or order expressed to be made on a compromise and comprising immovable property other than that which is the subject-matter of the suit or proceeding]; or

(vii) any grant of immovable property by 3[Government]; or

(viii) any instrument of partition made by a Revenue-Officer; or

(ix) any order granting a loan or instrument of collateral security granted under the Land Improvement Act, 1871, or the Land Improvement Loans Act, 1883; or

(x) any order granting a loan under the Agriculturists, Loans Act, 1884, or instrument for securing the repayment of a loan made under that Act; or

[(xa) any order made under the Charitable Endowments Act, 1890 (6 of 1890), vesting any property in a Treasurer of Charitable Endowments or divesting any such Treasurer of any property; or]

(xi) any endorsement on a mortgage-deed acknowledging the payment of the whole or any part of the mortgage-money, and any other receipt for payment of money due

under a mortgage when the receipt does not purport to extinguish the mortgage; or

(xii) any certificate of sale granted to the purchaser of any property sold by public auction by a Civil or Revenue-Officer.

[Explanation.—A document purporting or operating to effect a contract for the sale of immovable property shall not be deemed to require or ever to have required registration by reason only of the fact that such document contains a recital of the payment of any earnest money or of the whole or any part of the purchase money.]

(3) Authorities to adopt a son, executed after the 1st day of January, 1872, and not conferred by a will, shall also be registered.”

47. Part X deals with the effects of registration and non-registration. Section 47 deals with time from which registered document operate and provides that a registered document shall operate from which it would have commenced to operate if no registration thereof had been required or made, and not from the time of its registration.

48. Section 48 deals with registered documents relating to property when to take effect against oral agreement whereas Section 49 deals with effect of non-registration of documents required to be registered. Section 78 is already quoted earlier which deals with power of the State Government to prepare the chart or schedule of

fees. Lastly, Section 90 which relied upon by the Petitioners deal with exemption from the Act and reads thus:

“90. Exemption of certain documents executed by or in favour of Government.—(1) Nothing contained in this Act or in the Indian Registration Act, 1877 (3 of 1877), or in the Indian Registration Act, 1871, or in any Act thereby repealed, shall be deemed to require, or to have at any time required, the registration of any of the following documents or maps, namely:—

- (a) documents issued, received or attested by any officer engaged in making a settlement or revision or settlement of land-revenue, and which form part of the records of such settlement; or*
 - (b) documents and maps issued, received or authenticated by any officer engaged on behalf of Government in making or revising the survey of any land, and which form part of the record of such survey; or*
 - (c) documents which, under any law for the time being in force, are filed periodically in any revenue office by Patwaris or other officers charged with the preparation of village records; or*
 - (d) sanads, inam, title-deeds and other documents purporting to be or to evidence grants or assignments by Government of land or of any interest in land; or*
 - (e) notices given under section 74 or section 76 of the Bombay Land-Revenue Code, 1879, or relinquishment of occupancy by occupants, or of alienated land by holders of such land.*
- (2) All such documents and maps shall, for the purposes of sections 48 and 49, be deemed to have been and to be registered in accordance with the provisions of this Act.”*

49. Since the State Government renewed the mining lease granted in favour of the Petitioner and executed mining lease deeds, directed Petitioners to register the renewal of the lease deeds with the Civil Registrar concerned. These letters have directed all the petitioners to register the mining lease deeds by paying 5% of the registration fees. The Petitioners under protest paid such fees and registered the documents while challenging it on various grounds. One of the Petitioners has paid the fees equivalent to the same duty i.e. 100% and not only 5% has subsequently amended. Thus the main contention revolved around Section 90 wherein it has been claimed by the Petitioner that mining leases are exempted for registration under Registration Act and such lease deeds are deemed to have been registered for all purposes including the one mentioned under MMRD Act. It is their contention that the State cannot insist the Petitioners for registering such mining leases further when they are deemed to have been registered.

50. The another relevant provision with regard to the present matters is the amendment carried out in the Indian Stamp Act by Goa Amendment Act 2012 wherein Section 3A was incorporated which reads thus:

"3A". Instrument of grant or renewal of a mining lease chargeable with duty - (1) Notwithstanding anything contained in any other provisions of this Act and rules made thereunder, on every instrument of grant or renewal of a mining lease, the stamp duty chargeable shall be equivalent to the fifteen percent of the amount of royalty that would accrue out of the annual extraction of minerals permitted under the Environmental Clearance issued for such mining lease under the relevant law in force, multiplied by the period of the lease.

Explanation:- For the purposes of sub-section (1), the average royalty of the highest grade of minerals from the year of commencement of the Indian Stamp (Goa Amendment) Act, 2012 shall be taken into consideration.

Provided that the duty payable under sub-section (1) shall not exceed the amount in Rupees arrived at by applying a rate of ten times annual extraction of mineral permitted under the Environmental Clearance issued for such mining lease under the relevant law in force, multiplied by the period of the lease.

Provided further that in case any mining lease is required to surrender the Lease or permanently abstain from undertaking any mineral excavation by or for reasons of any operation of Law, court orders passed or any notification issued generally under any Law for the time being in force and reasons or cause of such prohibition or restriction is not in any manner attributable to such lessee or mining operation undertaken and carried out by the lessee or his agents, servants, employees or persons claiming through or under such lessee, to the extent of such balance period of lease outstanding and unexpired the lessee shall be granted refund of duty paid under sub-section (1) herein above.

(2) *The duty chargeable under this section shall be paid in any Government treasury or Government Sub-treasury in such manner as may be prescribed.*

(3) *Where an application for renewal of Mining lease has been already made to the State Government prior to the expiry of the lease but renewal of the lease has not been granted by the State Government or the mining lease whose period is deemed to have been extended as per provisions contained in the relevant law in force by a further period till the State Government passes an order thereon, the stamp duty payable under sub-section (1) shall be paid by the applicant within a period of sixty days from the date of commencement of the Indian Stamp (Goa Amendment) Act, 2012 or within sixty days of issue of notice for executing the lease whichever is later, in the manner stated in sub-section (2) above.*

(4) *If the application for grant or renewal of mining lease is rejected by the State Government then the applicant shall be entitled for refund of full stamp duty paid by him without interest. In case of a mining lease whose period is deemed to have been extended by a further period till the State Government passes an order thereon and the State Government at a later date passes an order rejecting the renewal of the lease, the applicant shall be entitled for refund of such amount of stamp duty as arrived at by deducting from the total amount of stamp duty paid, the stamp duty chargeable in respect of such mining lease till the date of such rejection order:*

Provided that no such refund shall be made if the order rejecting the application is challenged or the time limit for presenting an application for revision of the order of rejection is not expired".

51. The provisions in MMDR Act 1957 deals specifically with mines and minerals, its development and regulations which is a special Act of the Central Government. The relevant provisions of MMDR Act are also important to deal with as it directly relates to the present matters wherein mining lease deeds were executed between the Government and the petitioners.

52. Chapter II deals with general restriction on undertaking prospecting and mining operations. Section 4 provides that prospecting or mining operations to be under licence or lease wherein it restricts that no person shall undertake any reconnaissance, prospecting or mining operations in any area, except under and in accordance with the terms and conditions of the reconnaissance permit or of a prospecting licence or of a exploration licence or as the case may be, of a mining lease, granted under this Act and the rules made thereunder.

53. Thus all mining operations are subject to such permissions and licenses or lease granted under the said Act are permitted and not otherwise. Section 5 deals with restrictions on the grant of mineral concession and provide that the State Government shall not grant a mineral concession to any person unless such person (a) is

an Indian national, or company as defined in 10[clause (20) of section 2 of the Companies Act, 2013 (18 of 2013)]; and (b) satisfies such conditions as may be prescribed.

54. Here the restriction is two fold that no Government shall grant such concession to a person other than Indian national or a company as defined under the Companies Act and satisfy such conditions as may be prescribed. Such words “ as may be prescribed” have to be read as “prescribed under law” and more specifically MMDR Act. 1957.

55. Chapter III of MMDR Act deals with the procedure for obtaining mineral concessions in respect of land in which the minerals vest in the Government. Section 10 deals with the application for mineral concession and provide that an application for mineral concession in respect of any land in which the minerals vest in the Government shall be made to the State Government concerned in the prescribed form and shall be accompanied by the prescribed fee. On receipt of such application the State Government may have regard to the provisions of the said Act and the Rules made thereunder grant or refuse to grant the permit , license or lease. Thus Section 10 prescribes that an application has to be made

to the State Government in the prescribed format and it is the discretion of the Government to grant or refuse such permission having regard to the provisions of the said Act and Rules thereunder.

56. Section 12 deals with registration of mineral concession and provides that the State Government shall maintain it in a prescribed form, (a) a register of applications for prospecting licences (b) a register of prospecting licences (c) a register of applications for mining leases (d) a register of mining leases etc. Every such register shall be open for inspection by any person on payment of such fee as the State Government may fix.

57. Chapter IV deals with Rules for regulating the grant of mineral concession wherein Section 13 empowers the Central Government to make Rules in respect of minerals.

58. The Mineral Concession Rules 1960 were framed as per powers under Section 13, by the Central Government wherein Chapter IV deals with grant of mining leases in respect of land in which the minerals vest in the Government. Rule 22 deals with applications for grant of mining leases which reads thus :

“22. Applications for grant of mining leases :- (1) An application for the grant of a mining lease in respect of land in which the minerals vest in the Government

shall be made to the State Government in Form I through such officer or authority as the State Government may specify in this behalf.

(2)

(3) (i) Every application for the grant or renewal of a mining lease shall be accompanied by -

(a) [a non refundable] fee of two thousand and five hundred rupees];

(b) Omitted.

(c) Omitted.

(d) A valid clearance certificate in the form prescribed by the State Government, of payment of mining dues, such as royalty or dead rent and surface rent payable under the Act or the rules made thereunder, from that Government or any officer or authority authorised by that Government in this behalf:

[Provided that in case the applicant is a partnership firm or a private limited company, such certificate shall be furnished by all partners of the partnership firm or, as the case may be, all members of the private limited company :]

[Provided that where any injunction has been issued by a court of law or any other competent authority staying the recovery of any such mining dues or income tax non-payment thereof shall not be treated as a disqualification for the purpose of granting or renewing the said mining lease :

Provided that where a person has furnished an affidavit to the satisfaction of the State Government stating that he does not hold and has not held a mining lease, it shall not be necessary for him to produce the said valid clearance certificate :

Provided that a properly sworn affidavit stating that no dues are outstanding shall suffice subject to the condition that the certificate required as above shall be furnished within ninety days of the date of

application and the application shall become invalid if the party fails to file the certificate within the said ninety days :

Provided further that the grant of a clearance certificate under sub-clause (d) shall not discharge the holder of such certificate from the liability to pay the mining dues which may subsequently be found to be payable by him under the Act or rules made thereunder.]

(e) Omitted.

(f) an affidavit stating that the applicant has -

(i) filed up-to-date income-tax returns;

(ii) paid the income-tax assessed on him; and

(iii) paid the income-tax on the basis of self-assessment as provided in the Income Tax Act, 1961;

(g) an affidavit showing particulars of area mineral-wise in 1[the] State, which the applicant or any person jointly with him -

(i) already holds under a mining lease;

(ii) has already applied for but not granted;

(iii) being applied for simultaneously;

(h) a statement in writing that the applicant has, where the land is not owned by him, obtained surface rights over the area or has obtained the consent of the owner for starting mining operations :

Provided that no such statement shall be necessary where the land is owned by the Government :

Provided further that the consent of the owner for starting mining operations in the area or part thereof may be furnished after execution of the lease deed but before entry into the said area:

Provided also that no further consent would be required in the case of renewal where consent has already been obtained during grant of the lease.

.....

(i a) The State Government may, for reasons to be recorded in writing, relax the provision of sub-clause (d) of clause (i).

(ii) Every application for the grant of a mining lease shall in addition to those specified in clause (i) be accompanied by a deposit of one thousand rupees for meeting the preliminary expenses in connection with the grant of the mining lease:

[Provided that the applicant shall deposit such further deposit as may be asked for by the State Government, within one month from the date of demand of such deposit.]

[(4) The applicant shall submit the mining plan, duly approved by the Central Government or by an officer duly authorised by the Central Government, to the State Government to grant mining lease over that area.]”

59. Rule 31 of the Rules 1960 deals with leases to be executed within six months. It is specifically provided that when on an application for the grant of a mining lease, an order has been made for the grant of such lease, a lease deed in Form K or in a form as near thereto as circumstances of each case may require shall be executed within six months of the order or within such further period as the State Government may allow in this behalf, and if no such lease deed is executed within the said period due to any default on the part of the applicant, the State Government may revoke the order granting the lease and in that event the application fee shall be forfeited to the State Government.

60. Sub Rule(2) of Rule 31 is of much importance which reads thus:

"31. Lease to be executed within six months:- (1) Where, on an application for the grant of a mining lease, an order has been made for the grant of such lease,a lease deed in Form K or in a form as near thereto as circumstances of each case may require, shall be executed within six months of the order or within such further period as the State Government may allow in this behalf, and if no such lease deed is executed within the said period due to any default on the part of the applicant, the State Government may revoke the order granting the lease and in that event the application fee shall be forfeited to the State Government.

[(2) The date of the commencement of the period for which a mining lease is granted shall be the date on which a duly executed deed under sub-rule (1) is registered."

(emphasis supplied)

61. Rule 40 of Rules 1960 deals with Registers and provides that a register of applications for mining leases shall be maintained by the State Government in **Form L**, a register of mining leases shall be maintained by the State Government in **Form M**. Thus these two registers and the formats i.e. Form M and Form L are provided under the Rules which deals specifically with contents of such registers.

62. In Writ Petition No.206 of 2015, it has been pointed out by Mr. Dhond that first renewal was applied in the year 1988 and it was granted somewhere in the year 1990 for a period of 10 years. The mining lease deed executed between the said petitioner and the State was duly registered with the sub-Registrar. It is evident from annexure D produced in the said petition.

63. It is also contended by Mr. Dhond that the second renewal which was granted somewhere in the year 1998 was also registered. Only with connection to the third renewal which was applied in the year 2006, the question of registration of such a document is challenged by the petitioner.

64. The first and foremost aspect is the contentions raised on behalf of the petitioner regarding so called exemption from registration and deemed to have been registered as provided under Section 90 of the Registration Act will have to be considered qua the provisions of MMDR Act.

65. Mr. Dhond would submit that Section 90 of the Registration Act is a general provision which cannot override the specific provision of a special law i.e. MMDR Act 1957. He submits that the exemption of certain documents from registration as provided under

Section 90 of the Registration Act will be restricted only under the Registration Act and not under the special provisions. He also would submit that sub section 2 of Section 90 specifically deals with the documents and maps referred to in Section 48 and 49 of the said Act to be deemed to have been registered in accordance with the provisions of the said Act alone. Mr. Dhond would submit that such deeming provision first of all relates to Sections 48 and 49 of the said Act and with such deeming provision is only in respect of the documents as provided under the Registration Act itself.

66. We found considerable force in the submission of Mr. Dhond as far as section 90 is concerned since the said provision deals with exemption of certain documents executed by or in favour of the Government. The wordings in sub section (7) has already been quoted above and more specifically “nothing contained in this Act or in the Indian Registration Act 1877 or in the Indian Registration Act 1871 or in another Act thereby repealed, shall be deemed to require or to have at any time require, the registration of any of the following document or maps”, need to be taken in to account.

67. Thus the exemption in Section 90 refers to only with the provisions of the Indian Registration Act or repealed Act and such

language nowhere prohibits or restricts the provisions of registration of documents in other Acts or special Act. The Registration Act is of the year 1908 whereas MMDR Act was enacted in the year 1957. Thus the legislature was very much aware about the provisions of the Registration Act. Thus the above wordings would clearly restrict the impact of Section 90 in connection with the Registration Act or the repealed Act.

68. The deeming provision found in Section 90(2) is again restricted to Sections 48 and 49 of the said Act.

69. Section 47 of the Act deals with the time from which registered documents operate whereas Section 48 deals with the aspect as to when the registered documents relating to property shall take effect against oral agreement. Section 49 speaks about the effect of non-registration of documents required to be registered. Here the wording is of much importance. It says “no document required by Section 17 or by any provision of Transfer of Property Act, 1882 to be registered shall (a) affect any immovable property comprised therein or (b) confer any power to adopt or (c) be received as evidence or any transaction affecting such property or conferring such power, unless it has been registered.

70. Thus the effects of non-registration of a document which is required to be registered under Section 17 of the Registration Act or by the provisions of Transfer of Property Act are stated.

71. We have already discussed the documents which are required to be registered under Section 17 of the Registration Act. Thus the provisions of the said Act i.e. MMDR Act 1957 with regard to mining lease deeds must prevail upon the provisions of the Registration Act and more specifically Section 90 as tried to be canvassed on behalf of the Petitioner.

72. Execution of lease between two individuals and registration of it with a competent authority having power to register such deeds are two different aspects. Similarly maintaining registers by the State Government in Forms M and L as found in the Mineral Concession Rules is for different purposes. Recording details of such documents in such a register maintained by the respective department cannot be equated with registration of documents as required by law and that too before the competent authority having power to register such documents in its books maintained. Thus the contentions raised by the Petitioners that once the documents are entered in the respective registers maintained by the State

Government in Form M dealing with register of mining leases, coupled with the fact that document is deemed to have been registered as provided under Section 90(2), there was no requirement of registering deed with the Registrar as directed by the Government, cannot be considered as one and the same thing.

73. Rule 31 of Rules 1960 as discussed earlier would clearly suggest that the deed of lease must be executed within a period of six months between the parties in Form K. Once such document is executed between two parties, it has to be entered into a register maintained by the concerned Department however even though such document is executed between two parties, it would not come into effect till it is registered since sub Rule 2 of Rule 31 specifically provides that the date of commencement of the period for which mining lease is granted shall be the date on which duly executed deed under sub rule 1 is registered.

74. It simply means that execution of a document between two individuals is a different Act itself, whereas registering such a document with the competent authority having power to register it, is a separate procedure. The lease deed as per MMDR Act and Rules shall not commence or come into existence unless it is registered.

The word “unless it is registered” used in Rule 31(2) deals with registration of such documents with the competent authority to have different effects. The first part deals with an agreement between two parties to grant such lease for a particular period. However, commencement of such lease shall be on the date of which such duly executed deed is registered. Thus the choice is certainly with the Petitioners since they have already executed the lease deed with the Government but failed to register it as directed. No doubt such registration was thereafter carried out under protest by paying the registration fees which had been challenged in these petitions.

75. In other words, the provisions of Section 90 of the Registration Act cannot be made applicable to the present matters since the provisions of MMDR Act are specifically with respect to mining leases and deals with mines and minerals development and regulations. It controls the iron ore which is the main ore in respect of all mining leases in Goa.

76. Iron ore is admittedly a specified mineral listed in part ‘C’ of the first schedule of the Act. As per the definition of mining lease as found in Section 3(c) of MMDR Act, it means a lease granted for the purpose of undertaking mining operations and includes a sub lease

granted for such purpose. As discussed earlier, no Mineral Concessions could be granted otherwise than in accordance with the provisions of MMDR Act and the Rules made thereunder. The State Government is duty bound to satisfy itself with the conditions as provided in Section 5 (1) before granting such mineral concession. Section 13 of MMDR Act gives powers to the Central Government to frame Rules and accordingly Rule 31 as discussed earlier is framed which gives specific effect to a mining lease only on the date of registration and not on the date of execution. Such rules, to our mind, constitute substantive requirements regarding registration of mining leases. It also provides that such lease must be registered and only then it will come into effect but not otherwise.

77. Section 90 of the Registration Act in no way overrides or restricts the provisions of MMDR Act and its rules or the provisions of Transfer of Property Act, more specifically regarding registration of the documents. As discussed earlier, the Registration Act is a general law whereas MMDR Act 1957 is a special law. The rule on construction of interpretation is settled that the provision of special law shall prevail on the provisions of general law. Thus the contentions on behalf of the Petitioners that Section 90 of the Registration Act shall prevail upon the provisions of MMDR Act and

its Rules, needs to be out-rightly rejected. Even otherwise the deeming fiction found in sub-rule 2 of 90 still not coming to the help of the Petitioners as it restricts itself to the provisions of the Registration Act and more specifically Sections 48 and 49 of the said Act. The effect of such deeming provision must be restricted to the limited purpose as provided therein and cannot be extended beyond it, and it certainly not intended to override or dilute the substantive requirement under MMDR Act and Rules framed thereunder.

78. The word “registered” is not defined under MMDR Act and Rules or even under the Registration Act. However the General Clauses Act 1897 provides that all the Central Acts made after the commencement of the said Act, unless there is repugnance in the subject or context, the word “registered” used with reference to a document, shall mean registered in India under the law for the time being in force for the registration of documents. In case of **Maneklal Mansukhbhai** (supra) this Court held that the word “law” to be the Indian Registration Act 1908 and not otherwise. Thus the provisions of MMDR Act and Rules 31 (2) deals with registration of documents which means that such a document is required to be registered as provided under the Registration Act and not otherwise.

79. In **Tarkeshwar** (supra), the Apex Court was basically dealing with the lease of an immovable property and more particularly a mining lease. Section 105 of the Transfer of Property Act was considered by the Apex Court in paragraph 34 which defines lease of immovable property. It is observed that every interest in immovable property or a benefit arising out of land, will be ‘immovable property’ for the purpose of Section 105 of the Transfer of Property Act. Right to carry on mining operations in land by extracting specified mineral and to remove or appropriate such mineral is ‘right to enjoy immovable property’ within the meaning of Section 105 of the Transfer of Property Act.

80. In the case of **Associated Cement Company Ltd**(supra), the Andhra Pradesh High Court was dealing with holding of mining leases in respect of a major mineral could be considered as purchasers of such major minerals mined by them. In this respect, two questions were considered in paragraph 14 i.e.(i) what is the nature of the contract entered into between the parties, whether it is a lease of immovable property, within the meaning of the Transfer of Property Act, or whether it is a licence, or a sale agreement; and (ii) what is the nature of royalty - whether it is the purchase price, or the owner's share in the produce ? After considering the decision in

Tarkeshwar (supra) it was observed in paragraph 24 that such leases have at all times been treated as leases of immovable property and accordingly such leases are considered as lease of immovable property and not a licence or agreement.

81. In the case of **Power Grid Corporation of India Ltd.** (supra) of which reliance was placed on behalf of the Petitioners, it was discussed by the Chhattisgarh High Court to consider whether the directions of the State authorities to execute lease and get it registered in accordance with the provisions of Registration Act is proper. While dealing with this issue, it was observed that the Power Grid has been allotted Government land in a particular village on payment of premium. Similarly NTPC was granted Government land in some villages as per the State Government order for construction of second stage of fly ash dam on payment of premium and annual rent. On payment of such premium and deposit of annual rent possession of the land to both State authorities were granted by the Government however the State authorities thereafter started insisting that the Power Grid and NTPS should get lease executed and registered in accordance with the provisions of Registration Act and for that they should make payment of registration fees and stamp duties as required under law. Power

Grid and NTPS challenged such communication of the Government on the ground that they are the beneficiary of the Government grant within the meaning of “grant” under the Government Grant Act 1895 and Section 181 and 182 of Chhattisgarh Land Revenue Code and that such grant or lease is not compulsorily registered under the Registration Act. While deciding such aspect, the Chhattisgarh High Court has observed that the lease being a yearly lease, reserving yearly rent without mentioning the term of lease, the same would be compulsorily registerable under Section 17 (1) (d) of the Registration Act, as the exception or exemption under Section 17 (2) has not been extended to the leases under Section 17 (1) (d), however, at the same time Section 90 of the Registration Act creates another category of document which are exempted from the registration. Thus, the legal effect is unambiguous and is not capable of deriving more than one meaning. For a documents to be covered within Section 90 (1) (d), the only thing to be determined is whether such document evidences any grant or assignment by the Government.

82. The above decision is distinguishable as it was dealing with the question of grant of land on yearly rent basis and there was specific provision under the Chhattisgarh Land Revenue Code as well as Government Grant Act which was considered whereas the matters in

hand specifically deals with mining leases and covered under the MMDR Act and Rules which provides that the lease shall come into effect only after it is registered. Thus the observations in the **Power Grid Corporation** (supra) will not be of any help to the Petitioners.

83. In the case of **M. Venugopal** (supra), the Apex Court was dealing with the dispute with regard to appointment of Development Officer by the LIC on probation period and extension of it. In that matter as per regulations, there was a deemed clause with regard to confirmation which is interpreted by the Apex Court in paragraph 11 which reads thus:

*"11. The effect of a deeming clause is well-known. Legislature can introduce a statutory fiction and courts have to proceed on the assumption that such state of affairs exists on the relevant date. In this connection, one is often reminded of what was said by Lord Asquith in the case of *East End Dwellings Co. Ltd. v. Finsbury Borough Council*³ that when one is bidden to treat an imaginary state of affairs as real, he must surely, unless prohibited from doing so, also imagine as real the consequences and incidents which inevitably have flowed from it one must not permit his "imagination to boggle" when it comes to the inevitable corollaries of that state of affairs. In view of the amendments aforesaid introduced in Section 48 it has to be held that Regulation 14 referred to above in respect of*

termination of the service of an employee of the Corporation within the period of probation shall be deemed to be a rule framed under Section 48(2)(cc) having overriding effect over Section 2(oo) and Section 25-F of the Industrial Disputes Act.”

84. The above decision is squarely with regard to service law however reliance is placed with regard to the deeming clause as far as Section 90(2) of the Registration Act. As discussed earlier, such deeming clause found in Section 90(2) would be restricted to the provisions of Registration Act itself and it cannot go beyond the scope of the said Act and more specifically the provisions of the said statute like MMDR Act and Rules thereunder directing that lease will come into effect only after it is registered. Thus the deeming clause is tried to be interpreted on behalf of the Petitioners will not be helpful.

85. In the case of **Maneklal Mansukhbhai** (supra), has relied upon by Mr. Dhond, this Court while observing the aspect of all document, Crimp, J. observed as under:

“Crump, J.

I agree substantially with the judgment just pronounced, but as' we are reversing the decision of the Court below, I desire to add my statement of reasons as briefly as possible.

28. I agree with the learned Judge that there is here a special contract, and for that purpose I rely upon a decision in *Habib Rowji v. The Standard illuminium and Brass Works, Ltd.* (1925) *I.L.R. 49 Bom. 715*, s.c. *29 Bom. L.R. 584*. I do not think that there is any express contract, but that there is an implied contract arising from the operation of Section 21 of the Indian Companies Act, read with Article 28 of Table A. The question, therefore, is in a suit on such a contract what Article in the schedule to the Indian Limitation Act is applicable? The Judge below has applied Article 115, and I think correctly. We are asked to apply Article 120 on the ground that this is a suit for which no period of limitation is otherwise provided in the schedule. But holding as I do that it is a suit on an implied contract, and therefore that it is a suit for compensation for the breach of that contract, it is clear to me that Article 120 cannot be invoked. Therefore, we come back either to Article 116 or Article 115, and the short ground on which I hold that Article 116 has no application is that I fail to see here any contract in writing registered. Certainly, there is no contract in writing in the ordinary sense of the word, and even if there were, I am quite unable to hold that the word "registered" in Article 116 means "registered under the Indian Companies Act", assuming that Section 8 of the General Clauses Act is applicable. There it is laid down that "registered", used with reference to a document, shall mean registered in British India under the law for the time being in force for the registration of documents." I really have no doubt whatever that the expression "the law for the time being in force for the registration of documents" is to be found in the Indian

Registration Act of 1908, and nowhere else. I cannot regard the Indian Companies Act as being in any sense "the law for the time being in force for the registration of documents". I think what is meant is the general law on the subject of registration in the sense in which that term is ordinarily understood, and that is the law in the Indian Registration Act of 1908 as appears from the preamble of the Act."

86. It has been claimed on behalf of the State by Mr. Dhond that provisions of Section 90 of the Registration Act and more particularly the deeming clause is not applicable to the matter in hand. While elaborating such submissions, Mr. Dhond would submit that the MMDR Act, 1957 is a special Act with regard to the mining activities along with the Rules framed thereunder. He would submit that all mining leases including the one executed between the Petitioners and the Government are squarely governed under the MMDR Act and Rules framed thereunder. Iron ore is the specified mineral listed in Part 'C' of the First Schedule of MMDR Act. He would submit that a mining lease include and means, a lease granted for the purpose of undertaking mining operations, which also include sub-lease.

87. Section 4(2) of MMDR Act, declares that no mineral concession shall be granted otherwise than in accordance with the

provisions of the said Act and the Rules made thereunder. Similarly, Section 5 deals with the conditions on a person who is entitled to have mineral concessions.

88. It is further argued on behalf of the State that various provisions under the MMDR Act and Rules framed thereunder are special provisions with regard to mines and minerals and thus any document or lease for the purpose of extracting minerals must be governed by MMDR Act and Rules thereunder. More emphasis is on Rule 31(2) of the Rules 1960 which mandate that agreement of lease will come into effect only from the date of registration. Hence, any mining lease is required to be executed and registered as provided under the MMDR Act and Rules.

89. We are fully convinced with such statements of Mr. Dhond. First of all and as discussed earlier, the provisions of MMDR Act and Rules thereunder are coming as a special statute of the Central Government and therefore such special statute must prevail upon the general statute. Admittedly, the Registration Act is a general statute.

90. The contention of Mr. Dhond that besides the special provisions of the MMDR Act and the Rules thereunder, Section 90

of the Registration Act does not on its plain terms override any other special Act including the MMDR Act or the Rules framed thereunder and thus the Petitioners cannot take advantage of deemed registration as found in Section 90(2) of the said Act. We also agree with such submissions for the simple reason that the MMDR Act is of the year 1956 whereas the Registration Act is of the year 1908.

91. In the case of **Kesora M. Cement** (supra), the Delhi High Court was called upon to discuss with regard to the some conditions issued in some Notification by Rajasthan Government. Though reliance is placed on behalf of the Petitioner, para 18 of the said decision it was observed that the circular was issued prior to the Mineral Concession Rules,1960, the same was not cancelled or withdrawn. However, the question therein as to who has to sign the mining lease i.e. whether the Director or the Deputy Director as per the said circular. In that view of the matter, the Delhi High Court observed that the question as to whether the lease requires to be registered does not arise and it is not, therefore, necessary to consider the plea of the respondents about requirement of registration. Thus the above decision will not in any way help the Petitioner.

92. Even if it is assumed that Section 90 of the Registration Act contains language akin to one found in a non obstante clause, it is necessary to note that it must be restricted to the language used therein considering the specific intention of the legislative policy. It cannot be extended the scope of Registration Act as tried to be projected by the Petitioners. Besides, the words used therein “for the purpose of Sections 48 and 49” specifically speaks about purpose and the intent of the legislature to limit the provisions of the said Section and thus it cannot be extended beyond it. Such intention of the legislature is clear and unambiguous. There is no scope for any further interpretation so as to bring it in the provisions of MMDR Act and Rules thereunder. It certainly cannot destroy a substantive requirements under the provisions of special statute.

93. Thus submissions on behalf of the Petitioners that the registration under the Registration Act is not required as first of all it is exempted and that it is deemed to have registered, cannot be accepted for the reasons as disclosed above. The deeming clause under Section 90 of the Registration Act will be restricted to the documents as mentioned under the said Act and more specifically under Sections 48 and 49 but not beyond. When the provisions of MMDR Act and Rules specify that lease deed will come into force

only from the date of its registration, it means that the document of mining lease is required to be registered. It cannot be accepted as tried to be projected by the Petitioners that since the document is mentioned in the register maintained by the Department, no further registration is required before the registering authority.

94. The next submission is with regard to the imposition of registration fee which is in fact not a fee but a tax. The Petitioner contended that there is no quid pro quo with regard to the fee in question as no facilities are given to the Petitioners for the purpose of registration of such document. The entire facility is available with the State Government and the documents which are required to be registered under the Registration Act and under other Acts, are registered with the Registrar duly designated with all infrastructure, manpower etc. available with the State machinery. It is also canvased that by charging special fees only for registration of lease deed, the Government is discriminating as the procedure for registration of any other document including sale deed, is the same which is required to be followed for registration of the lease deed. The Petitioner contended that they are not getting any other service from the State Government with regard to such registration. In

other words, it was contended that the fee is actually a tax in its true sense without authority of law to charge it.

95. The Petitioners also submitted that a reply filed on behalf of the concerned Officials against the Petitions would clearly go to show that its a fee and not a tax. Reliance is placed on the specific provisions of MMDR Act and the Rules which refers to registration fees.

96. It is a matter of record that no challenge is thrown to the competence of the State legislature to impose registration even on the mining leases. Even otherwise it has been rightly pointed out on behalf of the Respondents that the provisions itself gives powers to the State Government to impose fees and to prepare a schedule which is clear from Section 78 of the Registration Act as quoted above. Thus Mr. Dhond was justified in submitting that there is delegation of power granted to the State Government to prepare a table of fees payable for registration of documents or otherwise.

97. Article 245 of the Constitution of India deals with legislative relation and distribution of legislative powers. In this respect it is provided as to the extent of laws made by Parliament and by the Legislatures or States will act. Subject to the provisions of the

Constitution, the Parliament may make laws for the whole or any part of the territory of India, whereas the legislature of a State may make laws for the whole or any part of the State.

98. Article 246 deals with a subject matter of laws made by Parliament and by the Legislatures of States. It starts with a non-obstante clause and provides that notwithstanding anything in clause Nos.2 and 3, Parliament has exclusive powers to make laws with respect of any of the matters enumerated in the list I in the VII Schedule (Union List). Clause (2) of Article 246 again starts with non-obstante clause and provides that the Parliament and subject to Clause I, the legislature of any State also having power to make laws with respect to any of the matters enumerated in list III in VII th Schedule (concurrent list). Thus clauses No.1 and 2 will have to be read with Clause III which provides that subject to clauses No.1 and 2 the legislature of any State has exclusive powers to make laws for such State or any part thereof with respect to any of the matters enumerated in list II in the VII schedule (State list).

99. VIIth Schedule of the Constitution specifies lists I, II and III which are commonly called as Union List, Concurrent list and the State list. In list I, entry No.54 deals with regulations of mines and

mineral development to the extent to which such regulation and development under the control of the Union is declared by Parliament by law to be expedient in the public interest. Entry Nos. 96 and 97 deals with fees in respect of any of the matters in this list, but not including fees taken in any Court and any other matter not enumerated in List II or List III including any tax not mentioned in either of those Lists.

100. The List II - State List) and specifically Entry No.18 deals with land, that is to say, right in or over land, land tenures including the relation of landlord and tenant, and the collection of rents; transfer and alienation of agricultural land; land improvement and agricultural loans; colonization. Entry No.23 deals with regulation of mines and mineral development subject to the provisions of List I with respect to regulation and development under the control of the Union. Entry No.49 deals with taxes on lands and buildings. Whereas entry 50 speaks about taxes on mineral rights subject to any limitations imposed by Parliament by law relating to mineral development. Lastly, entry No.66 deals with fees in respect of any of the matters in this List, but not including fees taken in any Court.

101. List III(Concurrent List) and more specifically entry No.6 refers to transfer of property other than agricultural land; registration of deeds and documents whereas entry No.47 deals with fees in respect of any of the matters in this List, but not including fees taken in any Court.

102. In **Kesoram Industries Ltd.**(supra), the constitutional Bench has observed in paragraph No.146 as under:

"As stated earlier also, the impugned cess can be justified as fee as well. The term cess is commonly employed to connote a tax with a purpose or a tax allocated to a particular thing. However, it also means an assessment or levy. Depending on the context and purpose of levy, cess may not be a tax; it may be a fee or fee as well. It is not necessary that the services rendered from out of the fee collected should be directly in proportion with the amount of fee collected. It is equally not necessary that the services rendered by the fee collected should remain confined to the persons from whom the fee has been collected. Availability of indirect benefit and a general nexus between the persons bearing the burden of levy of fee and the services rendered out of the fee collected is enough to uphold the validity of the fee charged. The levy of the impugned cess can equally be upheld by reference to Entry 66 read with Entry 5 of Schedule II."

103. In the reply affidavit filed on behalf of the Under Secretary (Establishment) Law and Judiciary Department in Writ Petition

No.231 of 2015, specific stand was taken in paragraph 24 to 27 with regard to the element of quid pro quo, co-relation between amount raised through fees and expenses involved in providing the services etc which reads thus:

“24. I deny that the Registration Fee is a statutory fee and there is no element of quid pro quo, in as much as no special services are being offered to or benefit the Petitioner or the whole mining Industry as a whole. The co-relationship between the totality of the fee on one hand and the totality of the expense on the other hand, will be sufficient to justify the fee.

25. The Co-relationship between the amount raised through fee and the expenses involved in providing the services need not be examined with a view to ascertaining any accurate or arithmetical equivalence or precision in the correlation but it would be sufficient that there is a broad correlation. The petitioners has not disputed that there is a correlation between the Fee and its object. The concept of Fee cannot be tested on the basis of the quid pro quo in the case of the individual payer of the fee. Nevertheless, the State Government have to maintain offices of Sub Registrars in all Talukas and Districts of Goa, and post staff, which have to be paid salaries, Books and Registers have to be maintained, Digitalization of Documents have to be done. This also required trained manpower entailing expenditure in payments of their salary. Therefore the levy of Fee is justified.

26. I respectfully submit that a levy in the nature of Fee does not cease to be of that character merely because there is an element of compulsion or

coerciveness present in it, nor does it is a postulate of fee that it must have direct relationship to the actual service rendered by the authority to each individual who obtains the benefit of the service.

27. I submit that merely because the collection of Fee for services rendered are taken to the consolidated Fund of the State and not separately appropriated towards the expenditure for rendering the services, by itself will not be decisive to term the collection as Tax. The element of quid pro quo in the strict sense is not Sine qua non for a fee.”

104. Even if the levy in question is to be decided on a specific touchstone of its being a fee, it is a settled proposition of law that the services rendered out from such a fee is not necessarily be directly in proportion with the amount of the fees. It is not necessary that such services rendered should remain confined to the person from whom such fee is collected. Even availability of indirect benefit and a general nexus between the person bearing the burden of levy of fee and the services rendered out of the fee is enough to hold its validity, as observed in the case of **Kesoram** (supra). In paragraph No. 146 as quoted earlier.

105. This Court in **Sesa Sterlite Ltd** (supra), wherein one of us (Bharat P. Deshpande,J) was a member, discussed in detail as to whether it could be considered as a tax or fee from paragraph No. 41

onward. After considering various divisions of the Apex Court, it has been observed in paragraph 45 as under :

"45. It also needs to be observed that the Division Bench in Sociedade De Fomento Industrial Pvt. Ltd., Goa (supra) also considered the contention of the petitioners therein, that the State cannot levy any fee under Entries 6, 13 and 50 of List II, as it was required to provide some special service to the petitioner, and no such service, much less special service, was provided to the petitioners. The petitioners had also contended that the imposts can be by way of tax or fee, but not both. Considering such contention as raised on behalf of the petitioners the Division Bench referring to the decision in Kesoram (supra) had repelled the petitioners case that there must be a direct nexus between the fee levied and benefits rendered. It was held that what was necessary was a broad co-relationship, and that it was not necessary that services nor the incidence of the fee has to be uniform. It was observed that the element of quid pro quo was not always possible nor necessary, to be established by direct evidence and the traditional view of strict quid pro quo has undergone a substantial change. The Division Bench thus observed that the State does not have to show with a mathematical exactitude, that the fee charged corresponds to the service provided, but some link is required to be established between the fees collected and the benefit conferred. It was observed that it was good enough to establish that a link exists but it need not be direct. Considering the material on record, it was observed that sufficient evidence was placed on record of spending the money, both on road infrastructure

*and welfare activities. It was observed that it could not be said that the petitioners do not benefit at all from the services rendered and that there is not even a remote connection. It was held that the Goa Cess Act and the Rules are a device for the State to augment its resources and the services rendered by the collection of the levy, benefits the petitioner as well, and there existed a co-relationship. It was thus observed that the Goa Cess Act and the Rules, whether it imposes a tax or fee, could not be said to be unconstitutional. The Division Bench referring to the decision in Kesoram (*supra*) it was observed that it was immaterial that the nature of the impost is fee or tax, if both could be justified and it was not necessary that one of the pleas must be given up. In our opinion, as rightly urged on behalf of the respondents, the following observations of the Division Bench in Sociedade De Fomento Industrial Pvt.Ltd., Goa (*supra*) cannot be overlooked by the petitioners in raising the plea that cess is a tax and not fee:-*

“53. The next contention of the Petitioner is that the State cannot levy any fee under Entries 6, 13 and 50 as it is required to provide some special service to the Petitioner, and no such service, much less special service, is provided to the Petitioner. It is, therefore, contended that the entire endeavour is to raise revenue for building infrastructure. It is contended that the imposts can be by way of tax or fee, but not both. On the contention based on Entry 66, List II of the Petitioner pertaining power to charge fee, the Petitioners have relied on the decision in Tulloch to contend that upon enactment of the MMDR Act, no matter would be left in the State List for the State Legislature to levy fees.

54. The decision in *Tulloch* has been directly considered in *Kesoram*, and it has been held that the State is not denuded of its power. *Kesoram* has observed thus :

"146. As stated earlier also, the impugned cess can be justified as fee as well. The term cess is commonly employed to connote a tax with a purpose or a tax allocated to a particular thing. However, it also means an assessment or levy. Depending on the context and purpose of levy, cess may not be a tax; it may be a fee or fee as well. It is not necessary that the services rendered from out of the fee collected should be directly in proportion with the amount of fee collected. It is equally not necessary that the services rendered by the fee collected should remain confined to the persons from whom the fee has been collected. Availability of indirect benefit and a general nexus between the persons bearing the burden of levy of fee and the services rendered out of the fee collected is enough to uphold the validity of the fee charged. The levy of the impugned cess can equally be upheld by reference to Entry 66 read with Entry 5 of List II."

The Petitioner's contention that there must be a direct nexus between the fee levied and the benefits rendered, is not correct. Such exact proportion and direct links are not necessary. Services rendered is not a condition precedent, nor it is confined to the contributors alone. A broad co-relationship is all that is necessary. It is also not necessary that services nor the incidence of the fee has to be uniform. The element of quid pro quo is not always possible, nor necessary, to be established by direct evidence. Thus, the traditional view of strict quid pro quo has undergone a substantial change. The

State does not have to show with a mathematical exactitude that the fee charged corresponds to the service provided, but some link is required to be established between the fees collected and the benefit conferred. It is good enough to establish that a link exists but it need not be direct.

58. Sufficient evidence placed on record of spending the money, both on road infrastructure and welfare activities. It cannot be said that the Petitioners do not benefit at all from the services rendered and that there is not even a remote connection. The Goa Cess Act and the Rules are a device for the State to augment its resources. The services rendered by the collection of the levy benefits the Petitioner as well, and there exists a co-relationship. Therefore, the Goa Cess Act and the Rules, whether it imposes a tax or fee, cannot be said to be unconstitutional. Kesoram holds that it is immaterial if the nature of the impost is fee or tax, if both could be justified and it is not necessary that one of the pleas must be given up. It is not necessary to direct the State to choose whether the levy is a fee or tax. This distinguishing is only academic as far as legislative competence of the Goa Cess Act is concerned. It needs to be noted that by Notification dated 6 April 2016 the levy where royalty is paid to the Government has been reduced to 'nil'.

59. Thus, we conclude that the challenge of the Petitioner on the constitutional validity of the Goa cess Act and the Rules on the ground of legislative competence must fail.”

(emphasis supplied)

106. It is clear from the grounds raised in all these petitions that they did not question the legislative competence of the State to impose registration fees on the mining leases. Even if the interpretation of the provisions as well as the reply filed by the respective departments in these petitions to the effect of Rule 31(2) of Rules 1960 is accepted, the claim of the petitioners that the impugned amendment levying 5% of the charges of stamp duty as registration fees, is a tax without authority of law, will have no basis at all.

107. As held in the decision of **Kesoram**(supra) and **Sesa Sterlite Ltd** (supra), wherein other decisions have been already discussed in detail, it is clear that the question of levy is to be tested on the touchstone of its being a fee, is now well settled. It is not necessary that such services rendered out of the fee collected should be directly in proportion with the amount of fees collected. It is also equally not necessary to demonstrate that the services rendered would be confined to the persons from whom fees have been collected. Even availability of indirect benefit and a general nexus between the persons bearing such burden of levy of fee and the services rendered by the Department is enough to uphold its validity. Such an aspect

is also found in the reply affidavit filed by the State and more particularly in paragraph 14 in Writ Petition No. 231 of 2015.

108. In **Vijayalashmi Rice Mill** (supra), the cess imposed on the dealers who were doing the business of rice milling in addition to the purchase and sales tax was challenged. This decision is already considered in the case of **Sesa Sterlite Ltd.** (supra) in detail in paragraph 43. Even otherwise the reliance is placed by Mr. Diniz with regard to the observations of the Apex Court in connection with there has to be a broad correlation between the total amount of fees generated by the impugned cess and the total value of services rendered. This fact is already considered in **Sesa Sterlite Ltd** (supra) in quite detail and therefore no repetition of it is required since we are in full agreement of the observations in **Sesa Sterlite Ltd** (supra) above all these aspects.

109. In the case of **VAM Organic Chemicals Ltd.** (supra), Mr. Diniz while placing reliance on Sections 18, 30 and 31 would submit that the fees which are charged for registration is nothing but a tax. In **VAM Organic Chemicals Ltd**(supra) the respondents therein were manufacturers of organic chemicals who have set up facilities to produce industrial alcohol as raw material. The Respondents were

aggrieved by the levy of a license fee on specially denatured spirit(SDS). While dealing with this aspect, the Apex Court held that the levy in question was legislatively traceable to the Excise Act. The facts mentioned therein are clearly distinguishable from the matter in hand for the simple reason that the dispute in **VAM Organic Chemicals Ltd.**(supra) was to the levy of SDS and not with regard to registration of documents.

110. In **VAM Organic Chemicals Ltd.**(supra) the Apex Court discussed the distinction between the fee and the tax. However, the constitution Bench in **Kesoram**(supra) extensively dealt with the above aspect and as quoted earlier therefore the observations of **Kesoram**(supra) will prevail being a decision of the constitution Bench.

111. In the case of **AP Paper Mills Ltd.**(supra), the Apex Court observed in paragraph no.32 that the impugned license fee is regulatory in character and therefore the stricto sensu the element of quid pro quo does not apply. The question to be considered is if there is a reasonable correlation between the levy of license fee and the purpose for which provisions of the Act and the Rules have been enacted/framed.

112. In the case of **Calcutta Municipal Corporation**(supra) the Apex Court considered as to whether the imposition for the process of change in the name of the owner is in the nature of "a fee" or "tax" and whether its holder autorise or arbitrary to the Article 14 and 226 of the Constitution. While dealing with the difference between the fee and tax the Apex Court observed that if under the garb of regulation any fee or levy, any fee or levy which has no connection with the cost or expense of administering the regulation cannot be imposed and only such levy can be justified which can be treated as a part of regulatory measure. The matter in hand clearly goes to show that the fees which the State is now charging is for the purpose of registration of documents and for that purpose the State machinery is required to be used. Thus there is indirect correlation with the registration of documents and charging of fees and accordingly the observations in the case of Calcutta Municipal Corporation(supra) will not in any way help the Petitioner.

113. In the present matter, the registration authorities are made available by the State by creating infrastructure, manpower etc and the Petitioners are certainly going to utilize such facilities for the purpose of registration of their documents. Accordingly, the question as to whether it is fee or tax become insignificant

considering the powers to the State under Section 78 of the Registration Act to prepare a table of fees payable for the registration of documents and accordingly such table of fees was amended by adding registration of mining leases.

114. It is also necessary to observe that initially 100% of the stamp duty was considered as registration fee but it was reduced to 5% later on and it is a matter of fact that all the Petitioners registered their mining leases under protest by paying such registration fees.

115. The communications dated 09/12/2014 and 01/12/2014 issued by the Mining Department, thus cannot be faulted with. The reasons behind it is that the Petitioners are not entitled to claim that the Lease Deeds are considered to be deemed registered under Section 90(2) of the Registration Act. Such contentions of the Petitioners, as discussed earlier in detail and in view of the provisions of the MMDR Act, needs to be rejected. Similarly, the contentions raised by the Petitioners that there is no quid pro quo to the fees charged by the Respondent needs to be rejected since such power is available with the Respondent to amend the schedule of fees and since there is no challenge raised to the legislative competence, it is not necessary that such services rendered should

remain confined to the person from whom such fees is collected. Even the indirect benefit and the general nexus between the person bearing such burden of fees and the services rendered is enough to hold its validity.

116. For all the above reasons, we are of the considered opinion that the challenge raised to the communications and the declaration sought for the lease deeds are considered to be deemed to have been registered will have to be rejected.

117. The petitions stands dismissed. Rule stands discharged. No costs.

VALMIKI MENEZES,J.

BHARAT P. DESHPANDE, J.