

Amrut

IN THE HIGH COURT OF BOMBAY AT GOA
PIL WRIT PETITION NO. 12 OF 2023

1. Telotin Domingo Cabo
S/o Domingo Cabo,
39 years of age,
Indian National,
R/o 155, Funtemol, Uguem,
South Goa, Goa 403704
PAN No. AHDPC4700D
National Unique Identity
Number: [REDACTED]
Phone No. 8411939507
Email: reshmagama@gmail.com
Income: 3 Lacs p.a.
Fax No. Nil

2. Mr Diago Caitan Martins
S/o Caitan Martins,
58 years of age,
Indian National,
R/o H.No.237, Devlamoll,
Uguem, Sanguem Goa
PAN Number: BFXPM2031N
National Unique Identity
Number: [REDACTED]
Phone No. 9146049350
Email: aaaxzz717@gmail.com
Income: 3 Lacs p.a.
Fax No. Nil

3. Milton Diago Gomes
S/o Milton Diago Gomes
R/o H.No.151/A
Funtemol, Uguem, Sanguem,
South Goa

PAN Number: AXGPG6425J
National Unique Identity
Number: [REDACTED]
Phone No.9970798842
Email: miltongomes@gmail.com
Income: 3 Lacs p.a.
Fax No. Nil

4.Nicky Gomes
S/o John Gomes
H.No.169,
Funttemol, Uguem Sanguem,
Sanguem South Goa
PAN Number: AUBPG3675N
National Unique Identity
Number: [REDACTED]
Phone No.9850407790
Email:nickygomes984@gmail.com
Income: 3 Lacs p.a.
Fax No. Nil

... Petitioners

Versus

1. State of Goa
Through its Chief Secretary,
Having its office at Secretariat,
Alto, Porvorim Goa.
2. The Director of Mines
and Geology,
Institute Menezes Braganza,
Panaji Goa.
3. The Goa State Pollution
Control Board
Through its Member Secretary,
Nr Pilerne Industrial Estate,
Opp. Saligao Seminary,
Saligao, Bardez Goa.

4. The Mamlatdar of Sanguem,
Sanguem Rd.
Sanguem Goa.
5. The Collector of South Goa,
Matanhy Saldanha,
Administrative Complex,
South Goa, Margao Goa.
6. Goa State Environment
Impact Assessment Authority
Through its Member Secretary,
Department of Environment
and Climate Change
4th Floor, Dempo Towers,
Panaji Goa.
7. The Deputy Collector & S.D.O.
Sanguem Goa.
8. The Senior Town Planner
Town and Country
Planning Department,
Sanguem Goa.
9. The Village Panchayat of Uguem,
Sanguem
Through its Secretary,
Mulgao, Bicholim Goa.
10. Marushka Stone Industry,
C/o Josinho Pereira,
H.No.29/2, Pajimol,
Sanguem Goa.
11. Joao Laurence Baptista
H.No.105/D/3, Arlem
Salcete Goa.

12. Satyappa Gidappa Dhangalkar
H.No.56, Hodlem Moll, Kakoda,
Curchorem Goa.

13. M/s Dharna Metals
C/o Melba Pariera,
H.No. E-3, Pajimol, Uguem,
Sanguem Goa.

14. The Sociedade Patriotica
Dos Baldios Das Novas
Conquistas,
Through its Committee Members
Sanguem Goa.

...Respondents

Mr A. Viegas with Mr Mark Valadares and Ms Uma Prabhudesai,
Advocates for the Petitioners.

Mr D. J. Pangam, Advocate General with Mr Prashil Arolkar,
Additional Government Advocate for Respondent Nos. 1, 2, 4, 5, 7 and
8.

Mr D. J. Pangam, Advocate General with Mr S. Priolkar, Additional
Government Advocate for Respondent No.6.

Mr Pavithran A. V., with Mr Prasad Kholkar, Advocates for Respondent
No.3.

Mr A. D. Bhobe and Ms A. Fernandes, Advocates for Respondent Nos.
10 and 13.

Mr S. D. Lotlikar, Senior Advocate with Mr S. Sawant, Advocate for
Respondent No.11.

Mr V. A. Lawande and Mr Parimal Redkar, Advocates for Respondent
No.12.

Mr Ryan Menezes with Ms Gina Almeida, Mr Nigel Fernandes and Ms
S. Alvares, Advocates for Respondent No.14.

CORAM:	M. S. SONAK & BHARAT P. DESHPANDE, JJ
Reserved on :	22nd FEBRUARY 2024
Pronounced on:	27th FEBRUARY 2024

JUDGMENT (Per M. S. Sonak, J)

1. Heard Mr A. Viegas who appears with Mr Mark Valadares and Ms Uma Prabhudesai for the Petitioners, Mr D. J. Pangam, learned Advocate General with Mr Prashil Arolkar, learned Additional Government Advocate for Respondent Nos. 1, 2, 4, 5, 7 and 8 and Mr S. Priolkar, learned Additional Government Advocate for Respondent No.6, Mr Pavithran A. V., with Mr Prasad Kholkar for Respondent No.3, Mr A. D. Bhobe with Ms A. Fernandes for Respondent Nos. 10 and 13, Mr S. D. Lotlikar, learned Senior Advocate with Mr S. Sawant, for Respondent No.11, Mr V. A. Lawande with Mr Parimal Redkar for Respondent No.12, and Mr Ryan Menezes with Ms Gina Almeida, Mr Nigel Fernandes and Ms S. Alvares for Respondent No.14.

2. This petition was instituted in the purported public interest to require the authorities to take action against the basalt/stone quarrying by Respondent Nos. 10 to 13 in the property surveyed under No.52/0, Uguem, Sanguem Goa.

3. The Petitioners alleged that the quarrying lease term had already expired, there was evidence of quarrying beyond the lease area, environment clearance had already expired, there was no consent from the surface right owners and a host of other reasons why quarrying operations were illegal and unauthorisedly being undertaken by Respondent Nos 10 to 13.

4. The Respondents, while denying any illegalities, pointed out that the Petitioners were themselves involved in illegal quarrying operations for which the Director of Mines and Geology had made an order on 28.06.2023 imposing a fine of ₹1,97,12,500/- on one of the Petitioners. The Respondents submitted that this was not some bonafide public interest litigation, which ought to be dismissed on this ground without proceeding any further.

5. Before the above objection was raised, this Court, by order dated 27.04.2023, recorded the submissions of the learned Additional Government Advocate that the authorities had already carried out an inspection in the context of allegations made by the Petitioners against Respondent Nos. 10 to 13 and necessary affidavit/inspection report would be filed by the next date. Therefore, in our order dated 27.04.2023, we had clarified that if the inspection report reveals any illegalities or indicates that quarrying operations are carried out beyond the permissible extent, then it was expected that the Director of Mines and Geology takes necessary action to ensure that there is no quarrying beyond permissible limits.

6. By our order dated 24.07.2023, we took cognisance of the Director's order dated 28.06.2023 made against the first Petitioner and directed the first Petitioner to deposit an amount of ₹1,97,12,500/- in this Court within four weeks. In addition, we also directed the first

Petitioner to deposit an amount of ₹5,00,000/- towards security for costs in terms of rules applicable to public interest litigation.

7. In our order dated 24.07.2023, we also noted the learned AG's submission that the inspection carried out by the authorities had revealed that at least two of the Respondents had carried out quarrying operations beyond the leased area and as such, had defaulted the terms and conditions of the lease. Earlier, the learned AG had pointed out that though the terms of the quarrying leases had expired, Respondent Nos.10 to 13 had applied for renewal. The learned AG pointed out that in terms of Rule 19(6) of the Goa Minor Mineral Concession Rules, 1985, where the competent officer did not dispose of the application for renewal of the quarrying lease, the period of that lease shall be deemed to have been extended by a further period until the competent officer passes orders thereon.

8. The Petitioners filed Misc. Civil Application No.1787 of 2023 (F) seeking a review/recall of our order dated 24.07.2023, to the extent such order had directed the Petitioners to deposit the amount of ₹1,97,12,500/- + ₹5,00,000/- in this Court. Upon hearing the learned counsel for the parties and on being apprised that the Petitioners had already preferred revision against the Director's order dated 28.06.2023 requiring the Petitioners to pay an amount of ₹1,97,12,500/-, we varied our order but directed the Petitioners to deposit an amount of ₹5,00,000/- towards the security for costs in this Court. However, the

extension of time was granted to deposit this amount of ₹5,00,000/-. The record shows that the Petitioners deposited this amount of ₹5,00,000/- during the extended period.

9. In our order dated 11.09.2023, we were informed that the inspection reports reveal that Respondent Nos. 11 and 13 were undertaking quarrying operations within the leased area. However, Respondent Nos. 10 and 12 carried out quarrying operations beyond the leased area to the extent of 767 square metres and 212 square metres, respectively. We were informed that the Director of Mines and Geology has already made orders directing Respondent Nos. 10 and 12 to pay an amount of ₹26,46,150/- and ₹14,62,800/- for unauthorised quarrying beyond the permissible limits.

10. Mr Bhobe and Mr Lawande, who appear for Respondent Nos 10 and 12, respectively, submitted that they have already instituted revision petitions against the Director's order, and the same were pending before the Revisional Authority. Accordingly, by our order dated 11.09.2023, we directed the Revisional Authority to dispose of the revision petitions as expeditiously as possible and, in any case, within a month from the date of the order.

11. We pointed out that the Revisional Authority had not granted any stay. Still, the Government authorities were not taking steps to recover the amounts from Respondent Nos. 10 and 12. Similarly, the directions were also issued to the Revisional Authority to dispose of the

revisions instituted by the Petitioners challenging the Director's order dated 28.06.2023 as expeditiously as possible.

12. In our order dated 11.09.2023, we took cognisance of the Petitioners' contentions that Respondent Nos. 10 to 13 had encroached and carried out unauthorised quarrying operations even in the past for which they fined. The learned counsel for the Petitioners pointed out that despite such action, Respondent Nos. 10 to 13 have encroached further and continued their unauthorised quarrying operations beyond the leased area. Accordingly, we directed yet another site inspection in the presence of parties and submission of reports on such allegations.

13. By our order dated 11.10.2023, at the request of the learned AG, we extended the period for completion of the survey. Besides, we directed that if the survey indicated that any of the Respondents were undertaking quarrying operations beyond the leased area, the authorities must take immediate steps to stop such unauthorised quarrying.

14. Neither were our directions for disposal of the revision petitions nor for completion of inspection/survey complied with by the authorities within the timelines set out by us. The revision applications were not disposed of even when the matter was finally heard on 22.02.2024. The authorities neither bothered to seek any extension of time nor bothered to comply with our directions, even though, on account of the pendency of the revisions, the Government was taking

no steps to recover the amount from the Petitioners and the Respondents. This seeming reluctance to take action against those indulging in undertaking illegal quarrying or recovering public dues for the public exchequer is quite disturbing.

15. The inspection reports were ultimately filed on 18.01.2024. The inspection reports confirm that at least Respondent Nos. 10 and 12 were carrying out unauthorised quarrying operations beyond the area leased out to them. This was without considering the unauthorised use of the unleased area for dumping and other quarry related activities that had to be undertaken within the leased area. If this were to be considered, as it ought to have been, the encroachment is by practically all the private respondents, and the encroachment is even greater.

16. Mr Viegas, learned counsel for the Petitioners, submitted that the original lease period has already expired, and even the renewed term expired on the dates indicated in the charts (on pages 171-172 of the paper book). This information was supplied to the Petitioners by the Deputy Director of Mines and Geology under the RTI Act. He submitted that the Environment Clearance (EC) had also expired, at least in so far as Respondent Nos. 10, 12, and 13 were concerned. He submitted that none of the Respondents had any consent or N.O.C. from the surface right owners. He submitted that most of the Respondents were involved in carrying out quarrying operations beyond the originally granted leased area. He submitted that most of

the Respondents are repeat offenders and have no qualms about breaching the lease terms with impunity.

17. Mr Viegas submitted that on cumulative consideration of all the above circumstances, this Court must forthwith stop quarrying operations being undertaken by Respondent Nos. 10 to 13 and direct the authorities to recover the compensation/environment cost from Respondent Nos. 10 to 13. Mr Viegas relied on *Pallava Granites Industries India (P) Ltd. Vs Government of Andhra Pradesh and others*¹ and *Goa Foundation Vs Union of India and others*² to support his contentions.

18. Mr Viegas submitted that from the reports submitted by the authorities, it cannot be said that Respondent Nos. 10 and 13 have not undertaken mining activities beyond the leased area or that the encroachment by Respondent Nos. 10 and 12 is only 767 square metres and 212 square metres. He submits that the reports clearly show how these lessees have dumped quarried material or built some structures concerned with quarrying outside the leased area. He relied on *Goa Foundation Vs Union of India and others*³ to submit that the mining dump cannot be kept by lessees beyond the leased area.

¹ AIR 1997 SC 2098

² (2014) 6 SCC 590

³ (2014) 6 SCC 590

19. The learned AG submitted that renewal applications of all the Respondents except Respondent No.10 were pending with the competent authority, i.e. the Director of Mines and Geology. He submitted that such applications were filed 90 days before the expiry of the lease to the competent officer in Form 'F'. He submitted that in terms of Rule 19(6) of the 1985 Rules, once the application for renewal for the quarrying lease is made, the period of that lease shall be deemed to have been extended by a further period till the competent officer passes orders thereon. He submitted that quarrying operations are presently carried out under this deeming provision.

20. The learned AG submitted that the ECs in respect of Respondent Nos. 10, 12 and 13 were renewed up to 30.12.2023 vide communication dated 15.11.2022. He submitted that the competent authority considered the issue concerning the continuance of ECs already granted without considering the applications for renewal. He also referred to a Notification dated 12.04.2022 on this issue.

21. The learned AG submitted that there was no requirement to obtain the N.O.C. from the surface right owners, and the Division Bench settled this issue in the case of *Maria Teresa Philomena D'Rocha Pegado Vs State of Goa and others* (Writ Petition No. 158 of 2005 decided on 10.12.2013). He submitted that, in any case, this is a matter which would be considered by the competent authority while

disposing of the applications for renewal of quarrying leases made by the Respondents.

22. The learned AG submitted that the action had already been taken against the lessees who carried out quarrying beyond the original leased area. He pointed out how the fine had already been imposed on them. He submitted that the breach of the terms and conditions of the original lease, like undertaking quarrying operations beyond the leased area, is one of the considerations that would be taken into account by the competent officer while considering the applications for renewal of quarrying leases.

23. The learned AG submitted that the Petitioners have undertaken quarrying operations without having any leases in their favour. He submits that even criminal prosecution was filed against the Petitioners, and dismissal of the complaint was on technical grounds, which did not bar the State from launching fresh prosecution. He, therefore, submitted that this petition may be dismissed.

24. Mr Lotlikar learned Senior Advocate for Respondent No.11 submitted that by order dated 10.08.2023, one of the quarrying leases bearing No.4/BASALT/04 was already renewed by the competent officer. He submitted that Respondent No.11 had EC valid up to December 2024. He submitted that Respondent No.11 had consent to operate, and there were no allegations of encroachment beyond the original leased area. Therefore, he submitted that the petition must be

dismissed against Respondent No.11 since the allegations against Respondent No.11 were baseless.

25. Mr Lotlikar submitted that the Petitioner was a front/proxy put up by Respondent No.14, claiming to be the property owner where quarrying operations were undertaken. He submitted that Respondent No.14 has a dispute with the Government about the ownership of property. Therefore, to exert pressure, the petition was instituted, even though the Petitioners had undertaken large-scale unauthorised quarrying operations in the area.

26. Mr Bhobe for Respondent Nos. 10 and 13 and Mr Lawande for Respondent No.12 supported and adopted the contention of the learned AG and Mr Lotlikar. They submitted that this was not a genuine public interest litigation, and none of the Respondents undertook any unauthorised quarrying operations. Mr Lawande submitted that marginal encroachment was bonafide because the DMG authorities failed to make proper demarcation of the lease area at the site. He submitted that revision had already been instituted, and there was no illegality in the quarrying operations.

27. Mr Bhobe and Mr Lawande submitted that the Respondents they represent had already applied for renewal of EC, which was admittedly valid up to December 2023. They submitted that there was no further requirement of renewal since the EC was to operate during the term of

the quarrying lease. They submitted that this petition should be dismissed with costs for all these reasons.

28. Mr Lotlikar, Mr Bhobe and Mr Lawande submitted that dumping or provision for magazines, etc., need not be in a leased area and can be beyond. They submitted that all this cannot be regarded as encroachment because it does not amount to quarrying operations. They submitted that vegetation has now grown over this dumping, so the allegation of environmental degradation is baseless.

29. By way of rejoinder, Mr Viegas submitted that the criminal prosecution was launched against the Petitioners, but the competent Court has discharged the Petitioners. He, therefore, submitted that the presumption of innocence is only strengthened. He submitted that revision had been filed against the Director's order. He submitted that the Director's order was only a counterblast, and based on the same, there was no reason to question or doubt the Petitioner's credentials in instituting and pursuing this petition.

30. The rival contentions now fall for our determination.

31. The Petitioners based on the site inspection reports and the returns filed by the parties, illegalities have been noticed in the quarrying operations undertaken by the private Respondents. At least two of the Respondents have undertaken quarrying operations beyond the originally leased area. Almost all the Respondents have dumped

quarrying rejects, put up magazines or otherwise used the areas in excess of those leased to them. This is evident from the inspection reports and returns filed by the Director of Mines and Geology in this petition.

32. Respondent No.11 and the remaining private Respondents are undertaking quarrying operations without having, at least prima facie, any valid EC in respect of such operations. There is also no cogent explanation why the private Respondents' renewal applications were kept pending for almost three to four years and such private Respondents were allowed to continue quarrying operations based upon deeming provision under Rule 19(6) of the 1985 Rules.

33. Upon cumulative consideration of the above factors, which are evident from the reports filed by the Government Authorities and also affidavits filed by the Director of Mines and Geology, we do not think that it would be appropriate to dismiss this petition merely because there may be some problem about credentials of the Petitioners. At one stage, we were considering whether the Petitioners should be discharged and Amicus Curiae should be appointed to pilot the issues raised in this petition. However, all this would have entailed further delay. Instead, we heard the matter finally, focusing mainly on the reports and the returns filed by the Government authorities.

34. Since these reports and returns indicated violations and illegalities referred to above, we do not think it would be appropriate to dismiss this petition on account of the Petitioners' doubtful credentials.

Ultimately, the message is more important than the messenger in such matters. This does not mean that the credentials of the messenger are irrelevant in every case. If there was material to suggest that this petition was instituted for extraction of any money or other such collateral purpose, then surely we would have either dismissed this petition or at least discharged the Petitioners and appointed an Amicus Curiae. In any case, before proceeding further, we ensured that the Petitioners deposit an amount of ₹5,00,000/- towards security for costs. Mr Viegas stated that the Petitioners have deposited this amount in this Court.

35. From the information supplied to the Petitioners under RTI (on pages 171 to 172 of the petition), it is clear that Respondent No.10 was granted a quarrying lease over an area of only 5000 square metres in survey No.52/0 of Uguem, Sanguem Goa. This lease was originally granted on 10.02.1998. Apparently, this was renewed for two five-year terms, and there is no dispute that the lease term finally expired on 10.11.2021. The tenth Respondent claims to have applied for renewal 90 days before the expiry of this lease term. The application is therefore pending since August/September 2021. This Respondent relies on Rule 19(6) of the 1985 Rules, which makes a provision for deemed extension of the lease term until the competent officer passes an order on the application seeking renewal of the quarrying lease.

36. Similarly, the leases of Respondent Nos. 11, 12 and 13 expired on 13.04.2022, 08.09.2021 and 21.08.2019 respectively. One of the

leases of the eleventh Respondent is already renewed by order dated 10.08.2023. But the renewal applications of Respondent Nos. 11, 12 and 13 are still pending before the competent officer. Therefore, All these Respondents continued their quarrying operations based on deemed extension under Rule 19(6) of the 1985 Rules.

37. There is no explanation for the pendency of such applications for renewal of quarrying leases for this length of time. Merely because no time limit may have been imposed for disposal of the applications seeking renewal of quarrying leases, it does not mean that the competent officer can unreasonably delay or sit upon the applications for quarrying leases and thereby enable the parties to operate quarrying leases based upon a deemed extension. Where no time limit is prescribed, it is well settled that the act must be performed within a reasonable period.

38. The objective of providing deemed extension is not to enable quarrying lessees to continue with quarrying operations even after the expiry of the original lease period for some unreasonable length of time without determining whether such quarrying leases are entitled to any renewal or not. Often, lessees delay the preparation of quarrying plans so that quarrying can continue haphazardly and the exploitation of the State's mineral wealth is disproportionate (regardless of environmental concerns). Often, the lessees buy time for obtaining ECs, or renewal of ECs which involves significant formalities and environment protection measures which they wish to avoid or prolong to the extent possible. All this is directly facilitated by the delay in disposing of the renewal

applications. The legitimate object of providing deemed extension is not to facilitate unauthorised quarrying indirectly. The competent authorities charged with the solemn duty of protecting public resources must not facilitate wanton exploitation or environmental degradation.

39. As discussed later, most of these private Respondents have breached the terms and conditions of the original lease. There is material which suggests that they have undertaken quarrying operations beyond the leased area. There is material which suggests that these lessees have undertaken operations like dumping, etc., beyond the leased area, thereby encroaching on the unleased area. This material is in the form of site inspection reports and statistics disclosed by the Government itself. Still, by not deciding on renewal applications, the competent officer is allowing such lessees to continue with the quarrying operations for over 3 to 4 years based upon a deemed extension. This is not at all proper. No valid or convincing reason was cited before us for the inordinate delay in disposing of the renewal applications.

40. The records show that the quarrying lease was initially granted for five years and renewed for a further term of five years. In the case of Respondent Nos. 10, 12 and 13, almost three to four years have passed by on account of the competent officer not deciding the applications for renewal and thereby allowing these Respondents to carry on quarrying operations based on deemed extension. All this is quite arbitrary and unreasonable.

41. The competent officer is a trustee; The public resources are not his personal property. The Government is also a trustee enjoined with the responsibility of ensuring quarrying in accordance with the law and with due regard to environmental concerns. Therefore, the competent officer must dispose of the applications seeking renewal of quarrying leases with reasonable dispatch. While the object of the deemed extension under Rule 19(6) may be to protect the interest of bonafide quarrying lessees who have applied for renewal so that they should not be prejudiced on account of some reasonable time spent by the competent officer in disposing of such renewal applications, certainly, the object of this Rule is not to enable the quarrying lessees to continue with quarrying operations for an unreasonable length of time by taking advantage of the competent officer's indolence whether deliberate or otherwise in not disposing of renewal applications. Besides, the object of Rule 19(6) is certainly not to enable the competent officer to allow quarrying operations to continue based on deemed extension, even though there may be serious issues like previous defaults or expiry of EC.

42. Accordingly, we direct the competent officer to dispose of the pending renewal applications in accordance with law and on their own merits as expeditiously as possible and in any case not later than three months from today. The competent officer must under no circumstances delay the disposal of the renewal applications for any reason. If the competent officer fails to dispose of the renewal

applications within three months from today, at least Respondent Nos. 10, 12 and 13 will have to stop their quarrying operations forthwith. The Director of Mines and Geology will have to ensure that Respondent Nos. 10, 12 and 13 stop their quarrying operations no sooner the period of three months expires, and if, in the meanwhile, no renewal is granted by the competent officer.

43. The reason for making the above order and excluding the eleventh Respondent is that Respondent Nos. 10, 12 and 13, at least *prima facie*, do not have a valid EC as of date. The fact that they may have applied for renewal is not very relevant as long as such renewal is not yet granted. Besides, based on the site inspection reports and affidavits filed by the Director of Mines and Geology, at least Respondent Nos. 10 and 12 were carrying on actual quarrying operations beyond the leased area, even though in the past, they were fined precisely for such a violation.

44. In so far as Respondent No.11 is concerned, Mr Lotlikar pointed out that this Respondent has an EC valid up to 31.12.2024. Besides, though there is some material to suggest that even this Respondent had committed breaches in the past or may have dumped outside the leased area, at least there is no allegation about undertaking actual quarrying operations beyond the leased area. This is the reason why Respondent No.11 is being treated differently from Respondent Nos. 10, 12 and 13.

45. At this stage, we do not propose to go into the issue of the validity of ECs and whether, in terms of some Notification, the term of such ECs stands extended or not; then, the matter will have to be looked into by the competent officer in the first instance. This issue is specifically kept open.

46. Similarly, at this stage, we do not wish to go into the issue of the requirement of consent from the surface-right owners. Mr Viegas referred to the communication dated 04.03.2022 addressed by the Director of Mines and Geology to the Under Secretary (Revenue) (on page 171 of the paper book) in which the Deputy Director of Mines states that N.O.C. from the Government Department in whose name the land is recorded is a must before any quarrying lease or renewal of quarrying lease is granted. Again, we leave this matter to the decision of the competent officer in the first instance while considering the applications for renewal of leases.

47. The competent officer must consider the law laid down in *Pallava Granites Industries India (P) Ltd.* (supra) and *Maria Teresa Philomena D'Rocha* (supra) in the context of the requirement of N.O.C. from the surface right owners. Similarly, the competent officer must consider the decision of this Court in *Sociedade de Fomento Industrial Pvt. Ltd. Vs State of Goa and others* in Writ Petition No.400 of 2023 (F) decided on 26.04.2023 in the context of the requirement of EC.

48. The competent officer must also consider the decision of this Division Bench in the case of *Mr Viriato Hipolito Mendonca Fernandes Vs Village Panchayat of Sirsaim* in PILWP No. 15 of 2019, decided on 10.12.2019. This decision refers to the impact of provisions of the Goa Town and Country Planning Act, 1974, on the issue of grant or renewal of quarrying leases. The competent officer must take into account this decision and the findings thereon for deciding the pending renewal applications.

49. The learned AG submitted that previous default should be one of the considerations that the competent officer must take into account for deciding the applications for renewal of quarrying leases. According to us, the previous default, particularly where they are serious and if they are repeated, is one of the most vital considerations for deciding the applications for renewal of quarrying leases. If quarrying lessees repeatedly breached the terms of the quarrying leases, and that too, there is no point in granting them renewal. This would amount to giving a premium to those who defy the law.

50. Therefore, we direct the competent officer to consider the instances of previous breaches and their repetition while deciding the pending applications seeking renewal of quarrying leases. If he is not a competent officer, the Director of Mines and Geology must provide the competent officer with material placed on record in this petition, i.e., the site inspection reports and affidavits. Even the record of fines imposed upon the lessees in the past must be made available to the

competent officer and the competent officer must consider all this material when deciding the pending applications for renewal.

51. The Director of Mines and Geology, in his affidavit filed on 17.01.2024, has provided the following charts.

“4. I say that as per the said inspection report, the following violations are noted at the sites:

In respect of illegal extraction of laterite stones in Survey No.25/1 by Petitioner no.1 and his brother as per Survey report and charge sheet No.62/2022:

<i>PITS</i>	<i>Area of Pits on loco in Sq.mts. “A”</i>	<i>Dump/Rejects area in Sq.mts. “B”</i>
<i>PIT-1</i>	<i>1207</i>	<i>1135</i>
<i>PIT-2</i>	<i>958</i>	
<i>PIT-3</i>	<i>786</i>	
<i>PIT-4</i>	<i>1012</i>	
<i>PIT-5</i>	<i>310</i>	<i>361</i>
<i>PIT-6</i>	<i>304</i>	
<i>PIT-7</i>	<i>308</i>	<i>694</i>
<i>PIT-8</i>	<i>7965</i>	
<i>PIT-9</i>	<i>3249</i>	
<i>PIT-10</i>	<i>3030</i>	
<i>PIT-11</i>	<i>2477</i>	<i>1270</i>
<i>PIT-12</i>	<i>144</i>	
<i>Total</i>	<i>21750</i>	<i>3460</i>
<i>Grand Total (A + B) =</i>		<i>25210</i>

In respect of illegal quarrying beyond the lease area carried out by

Respondent nos.10 to 13

Quarry	Lease No.	Lease area in Sq. Mts.	Area at loco in Sq.mts. "A"	Area outside Lease in Sq. Mts.	Magazine Area in Sq.mts. "B"	Dump area in Sq.mts. "C"	Total Area in Sq.mts. (A+B+C)
A (M/s1/basalt/ Marushka 98 Stone) Resp no.10		5000	8918	5399	882	2504	12304
B (Danra10/basalt/ Metals) / 10-11 Resp no.13		6000	6866	1748	841	2495	10202
C (J. L.4/basalt/ Baptista) 04 Resp. No.11		7150	8966	3324	-	1365	10331
D (Satyappa6/basalt/ Dhangalker 10-11) Resp. no.12		5000	6337	2314	978	4712	12027
E (J. L.01/basalt/ Baptista) / 04 Resp. No.11		5080	11860	7197	934	5820	18614

52. The Director of Mines and Geology has placed on record the orders against Respondent Nos. 10 and 12 regarding the encroachment into the non-leased area and the fine imposed upon them. No doubt, these orders have been challenged in revisions that are not disposed of despite the directions we issued in this petition. In making such orders, however, the Director does not appear to have taken into account the activities undertaken by the lessees outside the leased area. For example,

much area has been utilised by the lessees for dumping operations. There is also a reference to the user of the area outside the lease. All these details are available in the Director's affidavit dated 17.01.2024.

53. In *Goa Foundation* (supra), the Hon'ble Supreme Court has held that the lessees cannot keep the dump beyond the leased area. This was despite mineral concession rules suggesting that tailings or rejects can be dumped outside the leased area. The Hon'ble Supreme Court, by referring to provisions of Section 4 of the MMDR Act, held that no such dumping was permitted and the rule will have to yield to the provisions of Section 4 of the MMDR Act. The Director in this case, after concluding that all the lessees have travelled beyond the originally leased area, has chosen to initiate action only against two of the lessees and that too in respect of actual quarrying operations beyond the leased area. However, no action is initiated against the lessees for dumping beyond the leased area.

54. The contentions of Mr Lotlikar, Mr Bhobe and Mr Lawande that such dumping causes no environmental degradation, with respect, are quite misconceived. The dumping beyond the leased area is firstly impermissible. Secondly, such dumping obviously causes serious environmental degradation and the same cannot now be downplayed simply because some vegetation may have now grown up on such dump. Nature, as we know, is resilient up to an extent. But that does not mean that we carry the matter up to the breaking point. If unfortunately,

nature strikes back, we might have no effective means to shield ourselves. Against the laws of nature, there is no appeal.

55. Accordingly, we direct the Director to act on statistics he supplied in his affidavit dated 17.01.2024 and initiate action on the lessees for dumping beyond the leased area. Such action must be completed within three months from today. Further, we restrain Respondents 10 to 13 from undertaking any quarrying operations or dumping beyond the leased area. The DMG must ensure compliance and enforce this direction scrupulously.

56. While disposing of the renewal applications, the competent officer must apply his mind to the quarrying plan and inspect the quarries. This is because one of the allegations was about the depth to which the quarrying operations had reached and the potential threat to the groundwater tables in the area. All these are relevant considerations that cannot be ignored.

57. In the case of mining of major minerals in Goa, the Hon'ble Supreme Court had to intervene and practically the entire mining industry had to be halted because of the several unchecked illegalities and rapacious exploitation of mineral wealth. Goa's environment became a complete casualty. Most of the mines were found to be operating based on deemed extensions after the miners and the authorities realised that actual extensions were not easily possible

without legal and environmental compliances. The same modus operandi cannot be adopted in the case of minor minerals.

58. In *Goa Foundation v. M/s Sesa Sterlite Ltd. & Others*⁴, the Hon'ble Supreme Court observed the following in Paragraphs 1 and 2:

“1. Rapacious and rampant exploitation of our natural resources is the hallmark of our iron ore mining sector coupled with a total lack of concern for the environment and the health and well-being of the denizens in the vicinity of the mines. The sole motive of mining leaseholders seems to be to make profits (no matter how) and the attitude seems to be that if the rule of law is required to be put on the backburner, so be it. Unfortunately, the State is unable to firmly stop violations of the law and other illegalities, perhaps with a view to maximise revenue, but without appreciating the long-term impact of this indifference. Another excuse generally put forth by the State is that of development, conveniently forgetting that development must be sustainable and equitable development and not otherwise.

2. Effective implementation and in some instances circumvention of the mining and environment related laws is a tragedy in itself. Laxity and sheer apathy to the rule of law gives mining leaseholders a field day, being the primary beneficiaries, with the State being left with some crumbs in the form of royalty. For the State to generate adequate revenue through the mining sector and yet have sustainable and equitable development, the implementation machinery needs a tremendous amount of strengthening while the law

⁴ (2018) 4 SCC 218

enforcement machinery needs strict vigilance. Unless the two marry, we will continue to be mute witnesses to the plunder of our natural resources and left wondering how to retrieve an irretrievable situation.”

59. In *State (NCT of Delhi) Vs Sanjay*⁵ the Hon'ble Supreme Court has held that in any case where there is a mining activity by any person in contravention of the provisions of the MMDR Act, the officer empowered and authorised under the Act shall exercise all the powers including making a complaint before the jurisdictional magistrate. It is also not in dispute that the Magistrate shall, in such cases, take cognisance on the basis of the complaint filed before it by a duly authorised officer. In case of breach and violation of Section 4 and other provisions of the Act, the police officer cannot insist that the Magistrate take cognisance under the Act on the basis of the record submitted by the police alleging contravention of the said Act. In other words, the prohibition contained in Section 22 of the Act against prosecution of a person except on a complaint made by the officer is attracted only when such person sought to be prosecuted for contravention of Section 4 of the Act and not for any act or omission which constitute an offence under the Indian Penal Code.

60. The Hon'ble Supreme Court has held that there may be a situation where a person without any lease or licence or any authority enters into a river and extracts sands, gravels and other minerals and

⁵ (2014) 9 SCC 772

removes or transports those minerals in a clandestine manner with the intent to remove dishonestly those minerals from the possession of the State, such a person is liable to be punished for committing such offence under Sections 378 and 379 of the Indian Penal Code. From a close reading of the provisions of the MMDR Act and the offence defined under Section 378 of IPC, it is manifest that the ingredients constituting the offence are different. Hence, merely because initiation of proceeding for the commission of an offence under the MMDR Act on the basis of the complaint cannot and shall not debar the police from taking action against persons for committing theft of sand and minerals in the manner mentioned above by exercising power under the Criminal Procedure Code and submit a report before the Magistrate for taking cognisance against such person. In other words, in a case where there is a theft of sand and gravel from the Government land, the police can register a case, investigate the same and submit a final report under Section 173 of Cr.P.C. before a Magistrate having jurisdiction for the purpose of taking cognisance as provided in Section 190 of the Criminal Procedure Code.

61. In *Centre for Public Interest Litigation Vs Union of India*⁶ the Hon'ble Supreme Court has held that the State is empowered to distribute natural resources. However, as they constitute public property/national asset, while distributing natural resources the State is bound to act in consonance with the principles of equality and public

⁶ (2012) 3 SCC 1

trust and ensure that no action is taken which may be detrimental to public interest. Like any other State action, constitutionalism must be reflected at every stage of the distribution of natural resources. In Article 39(b) of the Constitution, it has been provided that the ownership and control of the material resources of the community should be distributed so as to serve the common good best, but no comprehensive legislation has been enacted to define natural resources and a framework for their protection generally. Of course, environmental laws enacted by Parliament and State Legislatures deal with specific natural resources, i.e. forests, air, water, coastal zones, etc.

62. As noted above, one of the quarrying leases granted to Respondent No.11 is already renewed. Similarly, the quarrying lease granted to Respondent No.13 has also already been renewed. This information was made known to the learned counsel for the Petitioners when this matter was finally heard on 22.02.2024. Since such renewals are already granted and there was no challenge in this petition to the said renewals, we clarify that we have not gone into the issue of the legality or validity of such renewals. Accordingly, we grant the Petitioners or any other aggrieved party the liberty to challenge such renewal in accordance with the law and before the appropriate forum. If such challenges are instituted, the appropriate authority must endeavour to dispose of the same within three months from the date of their institution. All contentions of all parties in this regard are kept open.

63. Once again, we direct the Revisional Authority to dispose of the revisions instituted by the Petitioners, Respondent Nos. 10 and 12, as expeditiously as possible and, in any case, within a month from today. We restrain the Petitioners from withdrawing the amount of ₹5,00,000/- deposited by them in this Court until the disposal of their revisions before the Revisional Authority. If the revisions are dismissed, liberty is granted to the Director of Mines and Geology to apply for withdrawal of this amount from the Court for appropriation towards the fine amount imposed upon the Petitioners.

64. Accordingly, we dispose of this petition by making the following order:

- (a) We direct the Revisional Authority to dispose of the pending revisions instituted by the Petitioners and Respondent Nos. 10 and 12 as expeditiously as possible and, in any case, within a month from today. Such revisions must be disposed of by complying with the principles of natural justice and fair play and having regard to law and the merits of the revisions petitions;
- (b) We direct the competent authority/Director of Mines and Geology to dispose of the applications for renewal of quarrying leases made by Respondent Nos. 10 to 13 as expeditiously as possible and, in any case, within three months from today. In disposing of such applications, the

competent authority/DMG must take into account the legal and factual position and the observations made in this judgment and order;

- (c) In case the revisions are not disposed of within three months from today and in the meanwhile, Respondent Nos. 10, 12 and 13 obtain no specific renewals or extensions for their environment clearance (ECs), then these Respondents must stop quarrying operations at the site. The DMG must ensure scrupulous compliance of this order;
- (d) We direct the Director of Mines and Geology (DMG) to act on statistics he supplied in the affidavit dated 17.01.2024 and initiate action within 15 days against the lessees for having dumped or otherwise encroached beyond the leased area. Such action must be completed within three months from today;
- (e) Further, Respondent Nos. 10 to 13 are restrained from undertaking any quarrying operations or dumping any material outside the originally granted lease area. The DMG must ensure scrupulous compliance with these directions. In case of any breach, the DMG is obliged to initiate immediate action in accordance with law and, meanwhile, even consider whether quarrying operations should be suspended;

- (f) The amount of ₹5,00,000/- deposited by the Petitioners in this Court will abide by the outcome of the revision petitions instituted by the Petitioners before the Revisional Authority as clarified in Para 63 of this judgment and order;
- (g) The State Government/appropriate authority must consider initiation of criminal proceedings against the Petitioners and Respondent Nos. 10 and 12 (or any of them) for extraction of basalt/undertaking quarrying either without any leases or in excess of the leased area granted to them;
- (h) Since we have not examined the legality and validity of renewals granted in respect of one of the leases to Respondent No.11 and renewal granted to the quarrying lease of Respondent No.13, the Petitioners or any other aggrieved party is granted liberty to challenge such renewal in accordance with law before the appropriate authority. All issues regarding legality, validity, etc., of such renewal are specifically kept open to be considered by such authority in the first instance.

65. The Civil Application No.142 of 2023 does not survive the disposal of the petition, and the same is also disposed of accordingly. There shall be no order for costs.

66. All concerned to act on an authenticated copy of this order.

BHARAT P. DESHPANDE, J

M. S. SONAK, J

TARI AMRUT NAGESH Digitally signed by TARI AMRUT NAGESH
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