

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 27th DAY OF SEPTEMBER, 2023

PRESENT

THE HON'BLE MR.PRASANNA B.VARALE, CHIEF JUSTICE

AND

THE HON'BLE MR.JUSTICE M.G.S.KAMAL

WRIT PETITION No. 14760 OF 2022 (GM-MMS)

C/W

WRIT PETITION No.14795 OF 2022 (GM-MMS)

AND

WRIT PETITION No.23151 OF 2022 (GM-FOR)

IN WRIT PETITION No.14760 OF 2022

BETWEEN:

- 1 . MSPL LIMITED
A COMPANY WITHIN THE
MEANING OF COMPANIES ACT, 2013
HAVING ITS REGISTERED OFFICE
AT BALDOTA ENCLAVE ABHERAJ
BALDOTA ROAD
HOSAPETE-583 203.
REPRESENTED BY ITS
AUTHORISED SIGNATORY
MR. K.A.V PRASAD
(VICE PRESIDENT - LEGAL).
- 2 . MR. RAHULKUMAR N. BALDOTA
SON OF NARENDRAKUMAR A.,
BALDOTA
AGED ABOUT 54 YEARS
HAVING OFFICE AT BALDOTA
ENCLAVE
ABHERAJ BALDOTA ROAD
HOSAPETE - 583 203.

...PETITIONERS

(BY SRI. ASHOK HARANAHALLI SR. ADVOCATE FOR

SRI. ADITYA NARAYAN ADVOCATE)

AND

1 . STATE OF KARNATAKA
COMMERCE AND INDUSTRIES DEPARTMENT
(MSME AND MINES)
KARNATAKA GOVERNMENT SECRETARIAT
VIKASA SOUDHA
BANGALORE-560 001.
REPRESENTED ITS PRINCIPAL SECRETARY.

2 . UNION OF INDIA
MINISTRY OF ENVIRONMENT
FOREST AND CLIMATE CHANGE
REGIONAL OFFICE (SOUTH ZONE)
KENDRIYA SADAN
4TH FLOOR E AND F WINGS
17TH MAIN ROAD
KORAMANGALA II BLOCK
BANGALORE-560 034.

ALSO AT:
INDIRA PARYAVARN BHAWAN
JOR BAGH ROAD, LODI ROAD
NEW DELHI-110 003
REPRESENTED BY ITS SECRETARY.

3 . STATE OF KARNATAKA
FOREST, ECOLOGY AND
ENVIRONMENT DEPARTMENT
KARNATAKA GOVERNMENT
SECRETARIAT, ROOM NO.448
4TH FLOOR, GATE NO.2,
M.S. BUILDING
BENGALURU-560 001
REPRESENTED BY ITS PRINCIPAL
SECRETARY (FORESTS).

...RESPONDENTS

(BY SRI. S.S. MAHENDRA, AGA FOR R1 & R3;
SRI. B.M. KUSHALAPPA, CGC FOR R2)

THIS WRIT PETITION IS FILED UNDER ARTICLES 226 AND 227 OF THE CONSTITUTION OF INDIA PRAYING TO i) A WRIT OF CERTIORARI QUASHING THE IMPUGNED COMMUNICATION DATED:13/06/2022 STYLED AS SHOW CAUSE NOTICE BEARING NO.CI 118 MMM 2021 (ANNEXURE-A) ISSUED BY RESPONDENT NO.1 ii) A WRIT OF MANDAMUS DIRECTING THE RESPONDENT NO.1 TO FORTHWITH EXTEND THE TERM OF THE LETTER OF INTENT UNTIL THE ISSUANCE/TRANSFER OF FOREST CLEARANCE IN FAVOUR OF THE PETITIONER NO.1 AND ETC.

IN WRIT PETITION No.14795 OF 2022

BETWEEN:

1 . MSPL LIMITED
A COMPANY WITHIN THE
MEANING OF COMPANIES ACT, 2013
HAVING ITS REGISTERED OFFICE
AT BALDOTA ENCLAVE ABHERAJ
BALDOTA ROAD
HOSAPETE-583 203.

REPRESENTED BY ITS
AUTHORISED SIGNATORY
MR. K.A.V PRASAD
(VICE PRESIDENT - LEGAL).

2 . MR. RAHULKUMAR N. BALDOTA
SON OF NARENDRAKUMAR A.,
BALDOTA
AGED ABOUT 54 YEARS
HAVING OFFICE AT BALDOTA
ENCLAVE
ABHERAJ BALDOTA ROAD
HOSAPETE - 583 203.

...PETITIONERS

(BY SRI. ADITYA NARAYAN, ADVOCATE)

AND

1 . STATE OF KARNATAKA
COMMERCE AND INDUSTRIES DEPARTMENT
(MSME AND MINES)
KARNATAKA GOVERNMENT SECRETARIAT
VIKASA SOUDHA
BANGALORE-560 001.
REPRESENTED ITS PRINCIPAL SECRETARY.

2 . UNION OF INDIA
MINISTRY OF ENVIRONMENT
FOREST AND CLIMATE CHANGE
REGIONAL OFFICE (SOUTH ZONE)
KENDRIYA SADAN
4TH FLOOR E AND F WINGS
17TH MAIN ROAD
KORAMANGALA II BLOCK
BANGALORE-560 034.

ALSO AT:
INDIRA PARYAVARN BHAWAN
JOR BAGH ROAD, LODI ROAD
NEW DELHI-110 003
REPRESENTED BY ITS SECRETARY.

3 . STATE OF KARNATAKA
FOREST, ECOLOGY AND
ENVIRONMENT DEPARTMENT,
KARNATAKA GOVERNMENT
SECRETARIAT, ROOM NO.448
4TH FLOOR, GATE NO.2,
M.S. BUILDING,
BENGALURU-560 001
REPRESENTED BY ITS PRINCIPAL
SECRETARY (FORESTS).

...RESPONDENTS

(BY SRI. S.S. MAHENDRA, AGA FOR R1 & R3;
SRI. B.M. KUSHALAPPA, CGC FOR R2)

THIS WRIT PETITION IS FILED UNDER ARTICLE 226 OF THE CONSTITUTION OF INDIA PRAYING TO i) A WRIT OF CERTIORARI QUASHING THE IMPUGNED COMMUNICATION DATED 13/06/2022 STYLED AS SHOW CAUSE NOTICE BEARING NUMBER NO.CI 120 MMM 2021 (ANNEXURE-A) ISSUED BY RESPONDENT NO.1 ii) A WRIT OF MANDAMUS DIRECTING THE RESPONDENT NO.1 TO FORTHWITH EXTEND THE TERM OF THE LETTER OF INTENT UNTIL THE ISSUANCE/TRANSFER OF FOREST CLEARANCE IN FAVOUR OF THE PETITIONER NO.1 AND ETC.

IN WRIT PETITION.23151 OF 2022

BETWEEN:

SRI. RAI BAHADUR SETH SHREERAM
NARASINGADAS PVT LTD.,
A COMPANY REGISTERED UNDER THE
COMPANIES ACT
REP. BY ITS AUTHORISED REPRESENTATIVE
OF THE BOARD OF DIRECTOR
SRI. SUDHINDRA V. JOSHI
S/O. LATE SRI. VENKOBA ACHAR JOSHI
AGED ABOUT 67 YEARS,
NO. 1499/1, POST BOX No.38
KARIGNOOR, HOSPET
VIJAYANAGAR DISTRICT - 583 201.

...PETITIONER

(BY SRI.LAKAMAPURMATH CHIDANANDAYYA, ADVOCATE)

AND

1 . THE UNION OF INDIA
REP. BY MINISTRY OF ENVIRONMENT
FORESTS AND CLIMATE CHANGE
GOVERNMENT OF INDIA
INDIRA PARYAVARAN BHAWAN
ALIGUNJ, JORBHAG ROAD
NEW DELHI - 110 003.

- 2 . DIRECTOR GENERAL OF FOREST
AND SPECIAL SECRETARY,
MINISTRY OF ENVIRONMENT,
FORESTS AND CLIMATE CHANGE,
GOVERNMENT OF INDIA,
INDIRA PARYAVARAN BHAWAN,
ALIGUNJ JORBHAG ROAD,
NEW DELHI - 110 003.
- 3 . THE ASSISTANT INSPECTOR
GENERAL OF FORESTS
MINISTRY OF ENVIRONMENT,
FORESTS AND CLIMATE CHANGE,
GOVERNMENT OF INDIA,
INDIRA PARYAVARAN BHAWAN,
ALIGUNJ JORBHAG ROAD,
NEW DELHI - 110 003.
- 4 . THE STATE OF KARNATAKA
REP. BY THE ADDL. CHIEF SECRETARY,
FOREST DEPARTMENT,
VIDHANA SOUDHA
BENGALURU - 560 001.
- 5 . THE PRINCIPAL CHIEF CONSERVATOR
OF FORESTS
FOREST DIVISION AND NODAL OFFICER,
GOVERNMENT OF KARNATAKA,
ARANYA BHAVAN,
MALLESHWARAM,
BENGALURU - 560 003.
- 6 . THE STATE OF KARNATAKA
REP. BY THE SECRETARY TO THE
DEPARTMENT OF INDUSTRIES
AND COMMERCE,
S.S.I TEXTILE AND MIENS,
VIKASA SOUDHA,
BENGALURU - 560 001.
- 7 . THE DIRECTOR
DEPARTMENT OF MINES AND GEOLOGY
KHANIJA BHAVAN,

RACE COURSE ROAD
BENGALURU - 560 001.

8 . THE DEPUTY CONSERVATOR OF FOREST
CHITRADURGA DIVISION
CHITRADURGA DISTRICT
CHITRADURGA - 577 501.

...RESPONDENTS

(BY SRI. KUMAR M.N., CGC FOR R1 TO R3;
SRI. S.S. MAHENDRA, AGA FOR R4 TO R8)

THIS WRIT PETITION IS FILED UNDER ARTICLES 226 AND 227 OF THE CONSTITUTION OF INDIA PRAYING TO
a) CALL FOR RECORDS, WHICH ULTIMATELY RESULTED IN COMMUNICATION DATED 07.07.2021, 27.04.2022 AND 05.11.2022 WHICH IS AT ANNEXURE-A, A1, AND A2
b) ISSUE AN ORDER, DIRECTION WRIT IN THE NATURE OF THE CERTIORARI QUASHING THE COMMUNICATION DATED 05.11.2022 AT ANNEXURE-A2 PASSED BY THE 5TH RESPONDENT BEARING No.KFD.HOFF/A5-1-MNG-12/2022-FC AND THE CLARIFICATION AT ANNEXURE-A DATED 07.07.2021 ISSUED BY THE 3RD RESPONDENT DECLARING THAT THE LESSEE WILL HAVE TO MAKE A FRESH APPLICATION AND THE COMMUNICATION AT ANNEXURE-A1 DATED 27.04.2022 ISSUED BY THE 4TH RESPONDENT AND DECLARE THAT THE INSISTENCE TO OBTAIN A FRESH STATUTORY PERMISSIONS INCLUDING THE PERMISSION UNDER SECTION 2 OF FOREST (CONSERVATION) ACT IS CONTRARY TO ORDER DATED 30.07.2015 VIDE ANNEXURE-J PASSED BY THE HON'BLE SUPREME COURT OF INDIA IN WP No-562/2009 VIDE ANNEXURE-J AND ETC.

THESE PETITIONS HAVING BEEN HEARD AND RESERVED, COMING ON FOR PRONOUNCEMENT OF ORDER, THIS DAY, **CHIEF JUSTICE.**, MADE THE FOLLOWING:

ORDER

Since the facts and circumstances and the issues involved in the aforesaid writ petitions are common, they are taken up and heard for common disposal.

2. Petitioners in WP No.14760/2022 and WP No.14795/2022 are common and are raising common contentions as under;

2.1. Petitioners in W.P.No.14760/2022 are before this Court contending that the respondent No.1 had put in public auction Lease hold rights in respect of a quarry lease bearing Old ML No.2563 in respect of 30.09 hectares of forest land in Ramanadurga village, Sandur Taluk, Bellary District, which was earlier granted in favour of Sri.Kanhaiyalal Dudheria (M.L.No.2563) in which the bid of the petitioner No.1 was accepted and a Letter of Intent dated 06.10.2018 had been issued in its favour. Similarly, the petitioners in W.P.No.14795/2022 claimed to have participated in public auction of Lease hold rights in respect of a quarrying lease bearing Old No.2148 to an extent

60.66 hectares in Dharmapura village, Sandur Taluk, Bellary District, which was earlier granted in favour of Sri.H.G.Rangangouda Mine (M.L.No.2148) in which the bid of the petitioner No.1 was accepted and a Letter of Intent dated 06.10.2018 had been issued in its favour.

2.2. That in terms of the Letters of Intent, issued in their favour as above they were required to obtain permissions and clearances including Forest Clearances (hereinafter referred as 'FC' for short) under section 2 of the Forest (Conservation) Act, 1980 (herein after referred to as FC Act for short) within a period of 30 months from the date of issuance of Letters of Intent. That upon obtaining all permissions, respondent No.1 would execute a mining lease in their favour. That the petitioners had obtained all requisite consents including R & R Plans, environmental clearances and mining plans from Indian Bureau of Mines except FC. That petitioners applied for transfer of FC which was issued in favour of earlier lessee. The said applications were rejected constraining the petitioners to file fresh applications. That despite applications,

representations, constant requests and reminders, respondent No.2 authority failed and neglected to transfer/grant FC to the petitioners. That due to inaction on the part of the respondent Nos.1 and 2 in transferring/granting FC, the period prescribed under Letters of Intent expired.

2.3. That the respondents are under obligation to transfer/grant the FC in view of the order dated 30.07.2015 passed by the Apex Court in the case of ***Samaja Parivartana Samudaya & Others vs. State of Karnataka and others*** reported in ***(2017) 11 SCC 509*** and also in view of amendment to the Mines and Minerals (Development and Regulation) Act, 1957 (hereinafter referred to 'MMRD Act' for short) which was amended on 28.03.2021 by inserting Section 8B providing for transfer of permissions and licenses in favour of the subsequent lessees. That the respondent authorities contrary to the above judgment of the Apex Court and the aforesaid provisions of law had issued show-cause notices dated 30.06.2022 holding that Letters of Intents issued in favour of the petitioners

have expired and have called upon the petitioners to show-cause as to why the Letters of Intent shall not be treated as invalidated and consequential action should not be taken.

2.4. Thus, being aggrieved by the same, the petitioners in the aforesaid writ petitions are before this Court seeking directions to the respondents to transfer the FC pertaining to their respective mining leases and also to extend the term of Letters Of Intent and to quash the aforesaid show-cause notices dated 30.06.2022.

3. Petitioner in W.P.No.23151/2022 is before this Court claiming to have participated in E-bidding invited by respondent on 04.08.2022 in respect of mining lease for an area of 74.86 hectares situated at K.K. Kaval, State Forest, Hosadurga Taluk, Chitradurga District. That, the petitioner being successful bidder was issued with a Letter of Intent dated 21.09.2022 in terms of which, petitioner had paid bid amounts. That, the petitioner had sought for transfer of FC held by the

earlier lessee namely, Mr. M. Srinivasulu as mandated by the Apex Court in its judgment rendered in *Samaja Parivartana Samudaya & Others (supra)*. That, the application of the petitioner was rejected by the respondent authorities vide communication dated 15.11.2022 as per Annexure-A2 declining to transfer the FC. Thus, being aggrieved by the same, the petitioner is before this Court seeking quash of said communication dated 15.11.2022 at Annexure-A2 and other communications and for a direction in the nature of mandamus to the respondent authorities to transfer the permission under Section 2 of the Forest (Conservation) Act in favour of the petitioner.

4. Statement of objections have been filed on behalf of the respondent Nos.1 to 3 to the aforesaid writ petitions denying the petition averments. It is contended that the petitioners have violated clause 12.2.2. of the tender condition and have defaulted in upfront payment. That they have also violated the condition No.5 of the order of the Apex Court dated 30.07.2015 with respect to 50% of the permissible

annual production as guaranteed dispatch as prescribed under approved R & R plan. That the initial 18 months provided to the petitioners to obtain statutory approvals calculated from the date of issuance of acknowledgement as successful bidders has expired. That after lapse of 18 months period, the petitioners are obligated to make payment of applicable amount based on quantity notionalized as per guaranteed dispatch. Since the petitioners have not made the payment towards of quantity of guaranteed dispatch even after expiry of period of 18 months, as per Rule 14 of the Mineral Auction Rules, 2015, petitioners are obligated to pay interest @ 15% p.a. on the amounts payable. Since the petitioners have submitted a representation seeking extension of validity of Letter of Intent on the ground of delay in obtaining FC, respondent –authority issued show cause notice dated 13.06.2022 with a view to provide an opportunity to the petitioners in accordance with law and in compliance with the conditions stipulated by the Hon'ble Supreme Court.

4.1. It is further contended that it is for the lessee to obtain FC by making proper application as per rules in that regard. That in terms of Section 8B (1) of MMDR Act, 1957, the licenses should have been valid. Further, as per the Government of India, Ministry of Environment, Forest and Climate Change Guidelines dated 07.07.2021, the lessee has to satisfy condition Nos.(i) to (viii) for transfer to take place. Further, as per the guidelines dated 27.04.2022, the transfer of Category "C" lease can only be done by Government of India. That as per the latest order of the Ministry of Environment, Forest and Climate Change Guidelines dated 13.09.2022 even guidelines dated 07.07.2021 are not applicable to Category "C" mines and the same is to be treated as a fresh lease. Thus, in terms of guidelines dated 13.09.2022, transfer of FC is not applicable to the present cases. The lessee has not identified 30.09 hectares of non-forest Compensatory Afforestation Land (CA land).

4.2. That Category "C" leases were the one where the violation of FC Act, 1980 was maximum, as such, there is no question of transfer of existing approvals to the new lessees. That therefore, the Ministry of Environment, Forest and Climate Change, by communication dated 30.09.2020 asked the petitioners to apply a fresh FC. The applications filed on-line by the petitioners were defective and as such the same was returned. The petitioners have re-submitted applications. The hardcopies of the said applications have been submitted on 22.12.2020 which is the relevant date for issuance of fresh FC. That on 27.07.2021, the proposal is sent to the Government of Karnataka. It is seen in the said proposal that the lessee have to identify 32.49 hectares of non-forest compensatory afforestation land and the petitioners have given an undertaking in that regard. That there is a delay on the part of petitioners in complying with the requirement, namely, identification of compensatory afforestation land which is a condition precedent before issuance of FC is to be considered.

Whether the approval clearances of the previous lessees are valid or not is to be decided by the Forest Authorities. Obtaining FC is not automatic and that the same is subject to fulfillment of condition as provided. Unless the same are complied with, the petitioners are not entitled for grant of FC.

Hence, sought for dismissal of the petitions.

Submissions of the learned counsel for the petitioners;

5. Sri. Ashok Haranahalli, learned Senior Counsel appearing for Sri. Aditya Narayan, learned Counsel for petitioners in W.P.Nos.14760/2022 and 14795/2022 reiterating the grounds urged in the memorandum of petitions submitted that;

5.1. the petitioners participated in the public auction of the Category 'C' iron ore leases upon specific representation made by the State authorities that they would be entitled for all the benefits as mandated by the Hon'ble Apex Court in its order dated 30.07.2015, in that, as directed by the Hon'ble Apex Court, all licenses, approvals and clearances which were issued

in favour of the earlier lessees would stand transferred in favour of the petitioners being preferred bidders/subsequent lessees.

5.2. Drawing attention of this Court to clause 1.1. of the Tender Notification (Annexure-D), learned Senior Counsel submitted that the very tender notification provides that the same had been issued pursuant to the order passed by the Hon'ble Apex Court in its judgment rendered in Samaj Parivartana Samudaya and others (supra) and that all information provided in the tender documents should be read together with Acts and Rules made thereunder and the aforesaid judgment.

5.3. Further drawing attention of the Court to clause 10.3. of the Tender Document, learned Senior Counsel submitted that the said clause leaves no doubt that in terms of the judgment of the Apex Court, existing statutory approvals/clearances that were in favour of lessees of the erstwhile Category 'C' mining

leases will have to be transferred in favour of the new lessees.

5.4. He referred to Notification and Notice Inviting Tender dated 26.09.2018 in support of his contention that the very notification inviting tenders was issued by the State Government pursuant to the aforesaid judgment of the Apex Court.

5.5. Referring to provision of Section 8B of The Mines and Minerals (Development and Regulation) Act, 1957 (for short 'MMRD Act') as amended in 2021, wherein a provision is made to the effect that all valid rights, approvals, clearances, licences and the lease granted to the lessee in respect of mines shall continue to be valid even after expiry or termination of lease and such approvals, clearances, licences and the like shall be transferred to and vested in the successful bidder of mining lease selected through auction. Thus, he submits, apart from the directions of the Hon'ble Apex Court, even in terms of mandate of Section 8B as amended in 2021 of the MMRD Act, respondent-

authorities are bound to transfer the FC in favour of the petitioners.

5.6. That despite earnest and sincere efforts of the petitioners to secure the FC in respect of the subject mines and despite the order of the Hon'ble Apex Court dated 30.07.2015 mandating expeditious transfer /issuance of the clearances to the auction purchaser and despite being statutory mandated in terms of the amendment to the Act, respondents have failed to abide by the said directions and perform their duty in transfer and issue of FC for the subject mine to the petitioner No.1.

6. Learned Senior Counsel for the petitioners relied upon the following judgments in support of his contentions;

- (i) Samaj Parivartana Samudaya and others vs. State of Karnataka and others **-(2017) 11 SCC 509.**
- (ii) Orissa vs. Mohd. Illiyas- **(2006) 1 SCC 275**
- (iii) Commissioner of Wealth Tax vs. Dr. Karan Singh, **1993 Supp. (4) SCC 500**

Hence, seeks for allowing of the petitions.

7. Sri. L.M. Chidanandayya, learned Counsel for the petitioner in W.P.No.23151/2022 apart from reiterating the grounds urged in the memorandum of writ petition and supplementing the submissions made by Sri. Ashok Haranahalli, brought to the attention of this Court, the notification dated 02.03.2007 issued under Section 5 read with Section 8 of the MMRD Act evidencing grant of lease in favour of earlier lessee namely, Sri. M. Srinivasulu and also brought to the notice of this Court, a communication dated 31.03.2010 issued by the office of Ministry of Environment and Forests, Government of India addressed to Principal Secretary to Government, Forest, Ecology and Environment Department, Karnataka Government Secretariat, Bengaluru evidencing the fact of Central Government according approval under Section 2 of FC Act, 1980 for diversion of Forest land for the purpose of mining in favour of Sri.Srinivasulu. He also referred to a communication dated 03.05.2017 produced at Annexure-K issued by

the office of Ministry of Environment, Forest and Climate Change(Forest Conservation Division), Government of India addressed to Principal Secretary(Forest), all States/Union Territories wherein at paragraph No.4, the Ministry has indicated its no objection for transfer of FC clearance in favour of new leases /LOI holders. Thus, he submits the petitioner being the successful bidder having been issued Letter of Intent is entitled for transfer of FC and the State Government cannot contend to the contrary.

7.1. He referred to the terms and conditions calling for e-auction for mining lease and a communication dated 04.08.2022 as per Annexure-M issued by the petitioner clarifying that they are participating in the e-auction acting upon the contents of the tender documents dated 11.07.2022. He further points out that by communication dated 03.09.2022 as per Annexure-N, respondent/authorities had declared him to be the bidder and Letter of Intent was issued by the Government of Karnataka on 21.09.2022 as per Annexure-P. He submits that nowhere in these

communications did the respondent/authority indicate that they would not transfer the FC certificate as mandated by the Hon'ble Apex Court. That the requisition letter was addressed by the petitioner on 07.10.2022 as per Annexure-Q seeking transfer of forest clearance as per the directions of the Apex Court. In response to the same, the respondent/authorities issued a communication dated 05.11.2022 as per Annexure-A2 by which the respondent/authority relying upon the guidelines dated 07.07.2021 and the clarification dated 13.09.2022 sought to reject the request of the petitioner and calling upon the petitioner to apply afresh for the forest clearance as per the FC Act, 1980 through Parivesh web-portal in Form-A. He submitted that the reasons assigned in the impugned communication dated 05.11.2022 is contrary to the directions of the Apex Court issued vide its order dated 30.07.2015. Learned Counsel relied upon the following judgment in support of his case.

- (1) Mohinder Singh Gill & Anr v. Chief Election

Commissioner, New Delhi & Ors, reported
in **AIR 1978 SC 851.**

Hence, seeks for allowing of the writ petition.

8. Per contra, Sri. S.S.Mahendra, learned Additional Government Advocate drawing attention of this Court to the prayer made by the petitioners in W.P.No.14760/2022 and W.P.No.14795/2022 submitted that the writ petitions in principle have been filed challenging the show cause notice dated 13.06.2022 at Annexure-A, which is issued under Mineral Auction Rules, 2015 and that the petitioners are required to give their explanation to the said show cause notice instead of invoking writ jurisdiction of this Court. That there is an alternate remedy under section 30 of the MMDR Act, if any order is passed on the show cause notice.

8.1. He submitted that the directions of the Apex Court in its order dated 30.07.2015 cannot be given effect to unconditionally. Referring to clause 12.2.2 of the tender condition, learned Additional Government Advocate submitted the petitioners in the instant cases

have violated the said terms with regard to 50% of the permissible annual production as prescribed under the approved R & R plan which is stipulated to be guaranteed dispatch.

8.2. He further submits that the petitioners were given initial period of 18 months to obtain statutory approvals from the date of issuance of acknowledgment as successful bidder on 20.03.2019 and the same ended on 22.06.2021. That after expiry of the said period of 18 months, in terms of condition No.5, the petitioners are obligated to make payment of the applicable amount based on the quantity notionalised as guaranteed dispatch.

8.3. That since, there is default on the part of the petitioners in complying with this requirement, under Rule 14 of The Mineral (Auction) Rules, 2015, they are obligated to pay interest at the rate of 15% per annum on the amount payable. He also contended that the petitioners have failed to execute MDPA as per sub-rule (6) of Rule 10 of The Mineral (Auction) Rules,

2015. That the Letter of Intent has expired on 05.04.2021, extension of validity of which has been sought for by the petitioners on the ground of delay in obtaining FC.

8.4. That in the circumstances, authorities have deemed it appropriate to afford an opportunity to the petitioners and thus accordingly issued show-cause notice dated 13.06.2022 which is in accordance with the directions of the Hon'ble Supreme Court. It is further contended that it is for the petitioners as lessees to obtain FC by making proper applications as per Rules. That in terms of Section 8B(1) of MMRD Act, 1957, the licences should have been a valid one. That apart as per the Government of India, Ministry of Environment, Forest and Environment Guidelines, dated 07.07.2021, the lessee has to satisfy (i) to (viii) conditions for transfer to take place. He also submitted that as per the guidelines dated 27.04.2022, transfer of Category 'C' lease can only be done by the Government of India. Drawing attention of this Court to the Guidelines dated 13.09.2022, learned Additional

Government Advocate submitted that in view of latest guidelines dated 13.09.2022, transfer of FC is not applicable in the case of Category 'C' mine and they have to apply afresh. He further brought to the notice of this Court a letter of Undertaking for Non-forest Compensatory Afforestation Land dated 26.07.2021 issued by the petitioners submitted that the said condition had not been fulfilled by the erstwhile lessee, therefore, the petitioners cannot as a matter of right claim transfer of FC of the invalid licence.

8.5. He further submitted that even amongst Category 'C' leases, there are differences. Referring to paragraph 14 of the show-cause notice dated 13.06.2022, learned Additional Government Advocate pointed out that in respect of several Category 'C' mines, the preferred bidders had appropriately obtained forest clearances and had even completed the process of execution of mining lease. He pointed out the forest clearances that have been obtained by some of the lessees including the petitioners herein as found

in clause (c) of said paragraph 14 of the said show-cause notice.

8.6. That the endorsement dated 30.09.2020, declining to issue FC had been issued as per Annexure-P and the same has not been challenged. That the petitioners have indeed accepting the rejection of requisition for transfer of FC filed fresh application thereby Doctrine of acquiescence is applicable to the facts of the present cases. He also submitted that since the present writ petitions are filed after about two years of rejection of application for transfer of FC, the petitions also suffer from delay and laches. Hence, seek for rejection of the writ petitions.

8.7. Learned Additional Government Advocate relied upon the following judgments in support of his contentions:-

- (i) Executive Engineer vs. Ramesh Kumar Singh and others- **(1996) 1 SCC 327.**
- (ii) Union of India & Ors. vs. Coastal Container- **Civil Appeal No.2276/2019.**

- (iii) Commissioner of Central Excise vs. Krishna Wax Private Limited-
(2020) 12 SCC 572.
- (iv) Union of India and others vs. N.Murugesan and others-
(2022) 2 SCC 25.

9. Sri. Kumar M.N., learned counsel appearing for respondent-Union of India submitted that the Forest Clearance Certificate is issued subject to certain conditions and same cannot be automatic. Referring to para 8 of the judgment of the Apex Court dated 30.07.2015 with regard to transfer of FC/EC, more particularly with regard to the direction to the concerned authority to take expeditious action for grant of statutory approvals such as the environmental clearance and approval/TP under FC Act, 1980, learned counsel submitted the said direction has to be read to imply that the cases falling under Category 'C' mines are to be considered expeditiously for the purpose of granting approvals or temporary working permission and same would not amount to automatic transfer of the said approvals.

9.1. He also submitted that in view of the fact that the very cancellation/termination of Category 'C' licence were directed by the Apex Court owing to damage caused to the forest land, it would not be justified to allow resumption of mining operation without any assessment of damage caused and requirement of further remedial measures to be taken in such cases.

9.2. He further submits that if the State Government forwards the case of the petitioners to the Central Government, its only then, the case for granting of approval would be considered. Hence, seeks for dismissal of the writ petitions.

10. Heard. Perused the records.

11. Before advertng to the rival submissions of the parties it is necessary to refer to the background based on which the present writ petitions have been filed.

12. That one Samaja Parivartana Samudaya & Others filed a writ petition against State of Karnataka & Others before the Hon'ble Apex Court in Writ Petition(Civil).No.562/2009 seeking to stop all mining and other related activities that were being carried on in the forest area of State of Karnataka in violation of earlier orders passed by the Hon'ble Apex Court and also that of the FC Act and had sought for a direction declaring as null and void, retrospectively, all contracts/sub-leasing which were in violation of the MMDR Act and to initiate penal action against the violators. The Hon'ble Apex Court constituted Central Empowered Committee (CEC) and directed it to conduct survey of all mining leases of iron ore in the districts of Bellary, Chitradurga and Tumakuru. The CEC submitted its final report to the Apex Court on 03.02.2012. Considering the quantum and magnitude of illegal mining activities, the leases were categorized into category 'A', 'B' and 'C'. The CEC recommended cancellation/determination of mining leases falling under Category 'C' and to allot such mines to the end

users through bidding in a transparent way. Accordingly, the Hon'ble Apex Court vide its order dated 18.04.2013 passed in W.P.(Civil) No.562/2009 reported in *(2017) 11 SCC 509* directed cancellation of certain Category 'C' leases and further directed the State Government to auction the said leases. Subsequently, the Hon'ble Apex Court vide order dated 30.07.2015 dealt with the issue with regard to modalities that would govern the auction of Category 'C' leases. While directing auction of 15 such Category 'C' leases, it laid down certain modalities and specific conditions for auctioning of such mines. One such condition/modality as imposed by the Hon'ble Apex Court was in respect of transfer of existing approvals and clearances in favour of new lessees. In that, the Hon'ble Apex Court has exclusively directed that all statutory approvals and clearances which were issued in favour of earlier lessees would be transferred in favour of new lessees.

13. The said order of Hon'ble Apex Court dated 30.07.2015 is extracted hereunder for immediate perusal.

"1. The issue with regard to modalities that would govern the auction of the Category 'C' mines which have been ordered to be cancelled by our judgment and order dated:18.04.2013 passed in *Samaj Parivartana Samudaya v. State of Karnataka* and other connected matters is being dealt with by the present order.

2. Shri Nilaya Mitash, IAS, Secretary, Commerce and Industries Department (Mines), Government of Karnataka, Bangalore is personally present in Court at the request of the Court. From the materials on record and the statement made by Shri Nilaya Mitash, Secretary, Commerce and Industries Department (Mines), Government of Karnataka, it appears that 15 of the Category 'C' mines are ready for auction. We, therefore, direct that the auction of the aforesaid mines, details of which are indicated herein below will commence immediately and stand concluded within outer-limit of 32 weeks preferably within 26 weeks with effect from today.

Sl. No.	Name of the Mine	ML No.
1	Deccan Mining Syndicate (P) Ltd	2525
2.	Karthikeyas Managanese	2559
3.	Hothur Traders	2313
4.	V.S. Lad & Sons	2290
5.	B.R. Yogendranath Singh	2186
6.	M/s Lakshminarayan Mining Co	2487
7.	Rama Rao Paol	2621
8.	Ramgad Mines & Minerals Pvt Ltd	2451
9.	M/s Channakeshava Reddy	2566
10.	M/s Nidhi Mining Company	2433

11.	M/s S.B. Minerals	2393
12.	M/s Srinivasalu Mines	2631
13.	M/s Tungabhadra Minerals Pvt. Ltd	2365
14.	M/s Tungabhadra Minerals Pvt. Ltd.,	2366
15.	M/s Mineral Mines and Traders	2185(A)

3. The modalities which would govern the auction would be as follows:

3.1 The lease boundary of each of the mining lease will be as approved by this Court by the judgment and order dated:18.04.2013.

3.2 Only the end-users engaged in production of sponge iron and/or pig iron and/or steel and/or pellets will be eligible to take part in the auction. The end-users will include public sector undertakings.

3.3 The reserve price under Rule 8(1) of the Mineral (Auction) Rules, 2015 will be specified in the tender documents at 35%.

3.4. The permissible annual production will be as prescribed under the approved R&R Plan prepared until such time that the same is modified by this Court.

3.5. The successful bidder/lessee will be required to produce and dispatch every year at least 50% of the permissible annual production as prescribed under the approved R&R Plan. Whenever the dispatch in a year is below the guaranteed dispatch as indicated above, in that case irrespective of the quantity actually dispatched, the total amount payable during the year will be based on the guaranteed dispatch. In addition, the lessee may also be required to surrender the lease. This condition will not be applicable during the initial period of 18 months provided to the successful bidder/lessee to obtain the statutory approvals.

3.6 The successful bidder/lessee will be required to implement the prescriptions/provisions of the approved R&R Plan in accordance with the guidelines approved by this Court. The cost incurred for this will be reimbursed by the State

Government to the successful bidder/lessee after recovering the same from the erstwhile lessee.

3.7. Consortium of end-users will not be eligible to participate in the auction.

3.8. The existing statutory approvals/clearances in favour of the lessee of the erstwhile Category 'C' mining leases will be transferred in favour of the new lessees. The authority concerned will take expeditious action for the grant of the statutory approvals such as the environment clearance and approval TWP under the Forest (Conservation) Act, 1980.

3.9. The State of Karnataka will be at liberty to reduce the reserve price for the mining leases for which no bid above the reserve price is received.

3.10. The sale proceeds of the auction, for the present, will be credited to the consolidated fund to the extent of 75% and 25% to the account of the special purpose vehicle (SPV). This will be subject to such further orders as may be passed.

4. The above conditions will naturally be in addition to all requirements spelt out by the amendments to the Mines and Minerals (Development and Regulation) Act, 1957 and the Mineral (Auction) Rules, 2015.

5. On behalf of the State of Karnataka a further submission has been made that for the present auction in respect of 9 mines whose size is very small may be kept in abeyance and out of the remaining 27 mines the exploration work may be permitted to be done in two phases. In the first phase, 15 mines (10 in Bellary, 3 in Tumkur and 2 in Chitradurga Districts) are proposed for exploration. According to the State, the exploration work is likely to be completed by June 2016 whereafter the remaining 12 mines will be taken up for exploration and completed by the end of January 2017. This, however, is subject to such orders that the Court may pass upon consideration of the feasibility of commencement of exploration work in a situation where the issue of enhancement/reduction of the cap on production is pending final decision. Upon due consideration,

we direct the State of Karnataka to proceed with the exploration work as indicated above.

(Emphasis supplied by us)

14. Also relevant to refer to clauses 1.1, 3.1, 3.6 and 10.3 of the tender document which are extracted hereunder;

1.1. This Tender Document has been issued pursuant to notification of an area with the intent to carry e-auction for grant of a mining lease for mineral specified herein, pursuant to the Act and the rules made thereunder and also the Supreme Court's judgments, and orders in Samaj Parivartana Samudaya and Ors. vs. State of Karnataka and Ors in W.P. (C) 562 of 2009 (collectively the "Judgment"). All information provided in this Tender Document should be read together with the Act and the rules made thereunder and the aforesaid Judgment. In the event of a conflict between this Tender Document and the aforesaid Judgment, the Act or the rules, the aforesaid Judgment, the Act or the rules, as the case may be, shall prevail.

3.1. In its Judgment, the Supreme Court cancelled the leases in respect of certain iron-ore mines (classified as Category "C" mines) located in Karnataka on account of illegal mining. The Supreme Court further directed to auction the Category "C" mines to end-users engaged in the production of sponge iron and/or pig iron and/or steel and/or pellets in accordance with the Judgment, the Act and the rules made thereunder.

3.6. The e-auction would be conducted in accordance with the Judgment, Act, the Auction Rules, the Minerals (Evidence of Mineral Content) Rules, 2015, any other order or notification issued by the Central Government pursuant to the Act and this Tender Document.

10.3 Execution of Mine Development and Production Agreement:

The State Government and the Successful Bidder shall enter into the MDPA upon the Successful Bidder having obtained all consents, approvals, permits, no-objections and the like as may be required under Applicable Law for commencement of mining operations. In its Judgment, the Supreme Court has directed that "existing statutory approvals/ clearances in Favor of the lessee of the erstwhile Category C mining leases will be transferred in Favor of the new lessees". In its Judgment, the Supreme Court has further directed that "the concerned authority will take expeditious action for the grant of the statutory approvals such as the environmental clearance and approval/ TWP under the Forest (Conservation Act), 1980"

15. Perusal of the aforesaid clauses of the tender documents also make it clear that the very issuance of the tender calling for e-auction in respect of category 'C' leases is in furtherance to the Act, Rules and the order passed by the Apex Court in the case of Samaj Parivartana Samudaya and others (supra).

16. In the aforesaid background, respondent No.1 -State Government issued notices inviting tenders notifying auction of leasehold rights in respect of iron ore mining lease referred above. The petitioners in the above writ petitions as noted above claim to have participated in the said auction and further claim to have been declared as preferred bidders. It is the

further claim of the petitioners that they secured all necessary and relevant clearances except FC and they applied for transfer of FC as per the mandate of modality issued by the Apex Court vide its order dated 30.07.2015 and that they made representations to the respondent -authorities to no avail.

17. Suffice to state that the State Government in furtherance to the orders passed by the Hon'ble Apex Court as noted above issued notification inviting tenders and acting upon the same bidders like the petitioners herein participated in the bidding process. It is also not in dispute that after having been declared as preferred bidders, the petitioners had paid/deposited earnest amount and communication of they being successful bidders followed by Letter of Intent were issued in their favour.

18. Apart from the aforesaid order of the Hon'ble Apex Court laying down the modalities for auctioning category 'C' leases and transferring permissions and clearances an amendment to MMRD

Act was brought in 2021. Section 8B of the MMRD Act as amended in 2021 reads as under:-

9. For section 8B of the principal Act, the following section shall be substituted, namely:—

"8B. (1) Notwithstanding anything contained in this Act or any other law for the time being in force, all valid rights, approvals, clearances, licences and the like granted to a lessee in respect of a mine (other than those granted under the provisions of the Atomic Energy Act, 1962 and the rules made thereunder) shall continue to be valid even after expiry or termination of lease and such rights, approvals, clearances, licences and the like shall be transferred to, and vested; subject to the conditions provided under such laws; in the successful bidder of the mining lease selected through auction under this Act:

(2) Notwithstanding anything contained in any other law for the time being in force, it shall be lawful for the new lessee to continue mining operations on the land till expiry or termination of mining lease granted to it, in which mining operations were being carried out by the previous lessee."

19. Thus, as rightly contended on behalf of the petitioners even in terms of the aforesaid provisions of MMRD Act, respondent authorities are obligated to transfer the Forest Clearance.

20. Learned counsel for the petitioners relied upon the judgment of the Apex court in the case of **UNION OF INDIA AND OTHERS VS. INDO-AFGHAN AGENCIES LIMITED** reported in **(1968) 2**

SCR 366, wherein at paragraphs 20, 21 and 24, the Apex Court has held as under;

*20. We hold that the claim of the respondents is appropriately founded upon the equity which arises in their favour as a result of the representation made on behalf of the Union of India in the Export Promotion Scheme, and the action taken by the respondents acting upon that representation under the belief that the Government would carry out the representation made by it. On the facts proved in this case, no ground has been suggested before the Court for exempting the Government from the equity arising out of the acts done by the exporters to their prejudice relying upon the representation. This principle has been recognised by the Courts in India and by the Judicial Committee of the Privy Council in several cases. In *The Municipal Corporation of the City of Bombay v. The Secretary of State for India in Council*(1), it was held by the Bombay High Court that even though there is no formal contract as required by the statute the Government may be bound by a representation made by it. In that case in answer to a requisition by the Government of Bombay addressed to the Municipal Commissioner to remove certain fish and vegetable markets to facilitate the construction of an arterial road, the Municipal Commissioner offered to remove the structures if the Government would agree to rent to the Municipality other land mentioned in his letter at a nominal rent. The Government accepted the suggestion and sanctioned the application of the Municipal Commissioner for a site for tabling and establishing the new markets. The Municipal Commissioner then took possession of the land so made available and constructed stables, workshops and chawls thereon. Twenty-four years thereafter the Government of Bombay served notices on the Municipal Commissioner determining the tenancy and requesting the Commissioner to deliver possession of the land occupied by the markets, and to pay in the meantime rent at the rate of Rs. 12,000/- per annum. The Municipality declined to pay the rent, and the Secretary of State for India filed a suit against the Municipal Commissioner for a declaration that the tenancy of the Municipality*

created by Government Resolution of December 9, 1865, stood determined and for an order to pay rent at the rate of Rs.12,000/- per annum. It was urged before the High Court of Bombay that the events which had transpired had created an equity in favour of the Municipality which afforded an answer to the claim of the Government to eject the Municipality. Jenkins, C.J.. delivering the judgment of the Court observed:

"The doctrine, involved in this phase of the case is often treated as one of estoppel, but I doubt whether this is a correct, though it may be a convenient name to apply.

It differs essentially from the doctrine embodied in section 115 of the Evidence Act, which is not a rule of equity, but is a rule of evidence that was formulated and applied in Courts of law; while the doctrine, with which I am now dealing, takes its origin from the jurisdiction assumed by Courts of Equity to intervene in the case of, or to prevent fraud."

After referring to Ramsden v. Dyson(1), the learned Chief Justice observed that the Crown comes within the range of equity and proceeded to examine whether the facts of the case invited the application of that principle.

21. This case is, in our judgment a clear authority that even though the case, does not fall within the terms of section 115 of the Evidence Act, it is still open to, a party who has acted on a representation made by the Government to claim that the Government shall be bound to carry out the promise made by it, even though the promise is not recorded in the form of a formal contract as required by the Constitution.

24. Under our jurisprudence the Government is not exempt from liability to, carry out the representation made by it as to its future conduct and it cannot on some undefined and undisclosed ground of necessity or expediency fail to carry out the promise, solemnly made by it, nor claim to be the judge of its own obligation to the citizen on an ex parte appraisalment of the circumstances. in which the obligation has arisen. We agree with the High Court that the impugned order passed by the Textile Commissioner and confirmed by the Central

Government imposing cut in the import entitlement by the respondents should be set aside and quashed and that the Textile Commissioner and the Joint Chief Controller of Imports and Exports be directed to issue to the respondents import certificates for the total amount equal to 100% of the f.o.b. value of the goods exported by them, unless there is some decision which fails within clause 10 of the Scheme in question.

21. Similarly, in the case of **M/S MOTILAL PADAMPAT SUGAR MILLS CO. LTD., VS.STATE OF UTTARA PRADESH AND OTHERS** reported in **(1979) 2 SCC 409**, the Apex Court has held as under;

"24. This Court finally, after referring to the decision in the Ganges Manufacturing Co. v. Surujmull (supra). The Municipal Corporation of the City of Bombay v. The Secretary of State for India (supra) and Collector of Bombay v. Municipal Corporation of the City of Bombay & Ors. (supra), summed up the position as follows:

"Under our jurisprudence the Government is not exempt from liability to carry out the representation made by it as to its future conduct and it cannot on some undefined and undisclosed ground of necessity or expediency fail to carry out the promise solemnly made by it, nor claim to be the Judge of its own obligation to the citizen on an ex parte appraisalment of the circumstances in which the obligation has arisen."

The law may, therefore, now be taken to be settled as a result of this decision that where the Government makes a promise knowing or intending that it would be acted on by the promises and, in fact, the promisee, acting in reliance on it, alters his position, the Government would be held bound by the promise and the promise would be enforceable against the Government at the instance of the promises, notwithstanding that there is no consideration for the promise and the promise is not recorded in the form of a formal contract as required by Article 299 of the

Constitution. It is elementary that in a Republic governed by the rule of law, no one, howsoever high or low, is above the law. Every one is subject to the law as fully and completely as any other and the Government is no exception. It is indeed the pride of constitutional democracy and rule of law that the Government stands on the same footing as a private individual so far as the obligation of the law is concerned: the former is equally bound as the latter. It is indeed difficult to see on what principle can a Government, committed to the rule of law, claim immunity from the doctrine of promissory estoppel. Can the Government say that it is under no obligation to act in a manner that is fair and just or that it is not bound by considerations of "honesty and good faith"? Why should the Government not be held to a high "standard of rectangular rectitude while dealing with its citizens"? There was a time when the doctrine of executive necessity was regarded as sufficient justification for the Government to repudiate even its contractual obligations, but let it be said to the eternal glory of this Court, this doctrine was emphatically negated in the Indo-Afghan Agencies case and the supremacy of the rule of law was established. It was laid down by this Court that the Government cannot claim to be immune from the applicability of the rule of promissory estoppel and repudiate a promise made by it on the ground that such promise may fetter its future executive action. If the Government does not want its freedom of executive action to be hampered or restricted, the Government need not make a promise knowing or intending that it would be acted on by the promisee and the promisee would alter his position relying upon it. But if the Government makes such a promise and the promisee acts in reliance upon it and alters his position, there is no reason why the Government should not be compelled to make good such promise like any other private individual. The law cannot acquire legitimacy and gain social acceptance unless it accords with the moral values of the society and the constant endeavor of the Courts and the legislatures must, therefore, be to close the gap between law and morality and bring about as near an approximation between the two as possible. The doctrine of promissory estoppel is a significant judicial contribution in that direction.

But it is necessary to point out that since the doctrine of promissory estoppel is an equitable doctrine, it must yield when the equity so requires. If it can be shown by the Government that having regard to the facts as they have transpired, it would be inequitable to hold the Government to the promise made by it, the Court would not raise an equity in favour of the promisee and enforce the promise against the Government. The doctrine of promissory estoppel would be displaced in such a case because, on the facts, equity would not require that the Government should be held bound by the promise made by it. When the Government is able to show that in view of the facts as have transpired, public interest would be prejudiced if the Government were required to carry out the promise, the Court would have to balance the public interest in the Government carrying out a promise made to a citizen which has induced the citizen to act upon it and after this position and the public interest likely to suffer if the promise were required to be carried out by the Government and determine which way the equity lies. It would not be enough for the Government just to say that public interest requires that the Government should not be compelled to carry out the promise or that the public interest would suffer if the Government were required to honour it. The Government cannot, as Shah, J., pointed out in the Indo-Afghan Agencies case, claim to be exempt from the liability to carry out the promise "on some indefinite and undisclosed ground of necessity or expediency", nor can the Government claim to be the sole judge of its liability and repudiate it "on an ex-parte appraisalment of the circumstances". If the Government wants to resist the liability, it will have to disclose to the Court what are the facts and circumstances on account of which the Government claims to be exempt from the liability and it would be for the Court to decide whether these facts and circumstances are such as to render it inequitable to enforce the liability against the Government. Mere claim of change of policy would not be sufficient to exonerate the Government from the liability: the Government would have to show what precisely is the changed policy and also its reason and justification so that the Court can judge for itself which way the public interest lies and what the equity of the case demands. It is only if the Court is satisfied, on proper and adequate material

placed by the Government, the over-riding public interest requires that the Government should not be held bound by the promise but should be free to act unfettered by it, that the Court would refuse to enforce the promise against the Government. The Court would not act on the mere ipse dixit of the Government, for it is the Court which has to decide and not the Government whether the Government should be held exempt from liability. This is the essence of the rule of law. The burden would be upon the Government to show that the public interest in the Government acting otherwise than in accordance with the promise is so overwhelming that it would be inequitable to hold the Government bound by the promise and the Court would insist on a highly rigorous standard of proof in the discharge of this burden. But even where there is no such over-riding public interest, it may still be competent to the Government to resile from the promise "on giving reasonable notice which need not be a formal notice, giving the promisee a reasonable opportunity of resuming his position" provided of course it is possible for the promisee to restore status quo ante. If however, the promisee cannot resume his position, the promise would become final and irrevocable. Vide Emmanuel Ayodeji Ajayi v. Briscoe".

22. In view of the aforesaid factual and legal aspects of the matter, as rightly contended by the petitioners the respondent authorities ought to have transferred the Forest Clearance.

23. The petitioners in Writ petition Nos.14760/2022 and 14795/2022 had filed an application for issuance of fresh FC which application

has been eventually rejected. It appears that the petitioners had filed yet another application as a matter of abundant caution. It is contended on behalf of the respondent authorities that the fact that the petitioners had filed applications seeking grant of fresh FC would amount to acquiesce on the part of the petitioners. This Court in view of the aforesaid facts and circumstances of the matter, is not inclined to accept the contentions of the respondent-State. It is an admitted fact that the petitioners had participated in the e-auction acting upon the representation made by the respondent authorities that the successful bidders upon payment of required bid amounts would be issued a Letter of Intent and thereafter the licences and the approvals which existed in the name of earlier lessees would be transferred and that the petitioners had constantly issued reminders and requests for issuance of FC. In these admitted factual situation merely because the respondent authorities for the reasons best known to them opted to reject the applications constraining the petitioners to file fresh

applications, Respondent - State would not be justified to contend that the said act would amount to an act of acquiesce.

24. The Apex Court in the case of **P.JOHN CHANDY & CO. (P) LTD V. JOHN P. THOMAS** reported in **(2002) 5 SCC 90** at paragraphs 11 and 12 while dealing with the ingredients of acquiesces has held as under;

"11. Section 11 (4) (i) of the Kerala Buildings (Lease And Rent Control) Act 1965 reads as under:

11. (4) A landlord may apply to the Rent Control Court for an order directing the tenant to put the landlord in possession of the building,

(i) if the tenant after the commencement of this Act, without the consent of the landlord, transfers his right under the lease or sub-lets the entire building or any portion thereof if the lease does not confer on him any right to do so;

Provided.."

A perusal of the relevant provision as quoted above clearly indicates that the landlord can claim possession of the building from the tenant in case of sub-letting by the tenant without the consent of the landlord, in case the lease does not confer on the tenant a right to sub-let. The provision provides for "conferment" of right on the tenant to sub-let the accommodation. That is to say, so as to be entitled to sub-let, the tenant must be granted that right to do so, by the landlord. The expression 'confer' is pointer to something done overtly and explicitly. The meaning of the word 'confer' as indicated in the Law Lexicon by P. Ramanatha Aiyar

2nd Ed.Reprint 2000 at Page 381 means "to give". "Conferring is an act of authority-----men in power confer". It is therefore clear that the conferring indicates some positive action in giving something, may be some right or privilege to another person. It is in this background that the word `consent' as occurring in clause (i) of sub-s.(4) of Section 11 of the Kerala Buildings (Lease and Rent Control) Act 1965 is to be seen. According to the said provision if the lease does not "confer" a right on the tenant to sub-let, he cannot do so without the consent of the landlord. If he does so after coming into force of the Act, he would be liable to be evicted and the possession be given to the landlord. On reading of the whole provision proposition of implied consent, in such cases, would not be readily acceptable. The consent of the landlord should be in a positive way, clear cut and without ambiguity since otherwise right to sub-let is only to be conferred on the tenant by the landlord in the lease itself. It can reasonably be expected that a right which is otherwise to be conferred by having such a condition in the lease itself, consent, in absence thereof, preferably be in writing and in case it is not so, it is to be clear cut without any ambiguity or shadow of doubt. The conduct of the landlord which has been mainly taken into account on the point of implied consent is his inaction for a long time despite the knowledge of the fact of sub-letting by the tenant to other persons. The period of 32 years as indicated by the appellate authority is incorrect as discussed earlier. Nonetheless it can be said that there has been inaction on the part of the landlord for some years if not 32 years. But inaction in every case does not necessarily lead to an inference of implied consent or acquiescence. In this connection we may refer to Words and Phrases Legally Defined Vol.1 Third Ed. Page 27 where we may first see what has been said about Acquiescence. It is as follows:

"Mere inactivity on the part of a defendant is not to be construed as acquiescence in delay by the plaintiff. "sleeping dogs, in the form of sleeping plaintiffs, need not be aroused by defendants from their slumbers" (per Roskill LJ in Compagnie Francaise de Television v. Thorn Consumer Electronics Ltd. [[1978] RCP 735 at 739]); Bremer Vulkan Schiffbau

und Maschinenfabrik v. South India Shipping Corporation [1979] 3 All ER 194 at 198, per Donaldson J."

It may also answer the observation of the appellate court that the landlord by inaction is to be taken to have waived his right to take any action against the tenant.

12. A distinction has also been drawn between 'Acquiescence' and 'Consent'. It is in relation to a dispute between a landlord and a tenant and we again refer to Words and Phrases Legally Defined Vol.1 Third Ed. Page 314 "[The Landlord and Tenant Act 1954, S.23(4) is concerned with a situation where an immediate landlord or his predecessor in title has 'consented' to a breach of covenant, or the immediate landlord has acquiesced in it.] 'I agree.. .that in the context of Section 23(4) of the Act, whatever consent or acquiescence may mean in different contexts, in that context 'consent' is put in plain antithesis to 'acquiescence', and that, therefore, if something falls within the description 'acquiescence', it is not consent. The difference which is pointed out between the two in this context is that 'consent' involves some affirmative acceptance, not merely a standing by and absence of objection. The affirmative acceptance may be in writing, which is the clearest obviously; it may be oral; it may conceivably even be by conduct, such as nodding the head in a specific way in response to an express request for consent. But it must be something more than merely standing by and not objecting. 'Bell v Alfred Franks & Bartlett Co. Ltd. [1980] 1 All ER 356 at 362. C.A. per Megaw LJ."

The above observations though no doubt made in reference to particular provision, yet they throw some light on the question of implied consent that there has to be something more than mere inaction or lack of initiative on the part of the landlord. In context with the above, we find our view reinforced on the meaning and import of the word `consent' as used in Cl.(i), sub.s.(4) of Section 11 of the Act when read in the background of the word `confer' in the latter part it will only mean that consent has to be with some positive action on the part of the landlord so that the tenant can be said to have had the authority to sub-lease his lease rights. Mere silence may not be enough.

25. Thus, the respondent authorities cannot be heard to justify the refusal to grant FC on the ground of acquiesce.

26. As regards the contention of the State that in order to transfer the FC, the same must be valid and that in the instant case the FC was not valid in view of non-compliance of the terms of the FC by the earlier lessees in the nature of non-furnishing of Compensatory Afforestation Land being canvassed also cannot be countenanced. It is necessary to note at this juncture that the petitioner in W.P.No.23151/2022

in its rejoinder to the statement of objections filed by the State has brought on record the facts that various persons similar to that of the petitioners herein had participated in the e-auction conducted by the State Government and that the Government of India had transferred all statutory permissions including permissions under Section 2 of FC Act on the recommendation made by the State Government. In furtherance to the said contention the petitioners therein had produced proceedings of the Government of Karnataka recommending transfer of FC pursuant to the orders passed by the Hon'ble Supreme court of India. Copies of the orders are produced at Annexures-T and V series. Perusal of the said orders reveal that the recommendations were made by the State Government and based on which orders were passed transferring the FCs in favour of subsequent lessees/ successful bidders as that of the petitioners herein subject to fulfillment of conditions enumerated therein. Thus, it is clear from the perusal of the said recommendations of the orders that the FCs were

directed to be transferred in favour of the successful bidders of the e-auction subject to conditions to be fulfilled. Therefore, there is no justification in the contentions raised by the respondent Nos.1 and 2 that the FCs would be transferred if it is valid and only if the conditions are fulfilled by the previous lessee.

27. It is also contended by the respondent authorities that the petitioners had given undertaking to furnish compensatory afforestation land and that would itself is an indication that FC would be transferred on fulfillment of such condition. The said contention also runs contrary to the orders of Hon'ble Apex Court and the communication issued by Ministry of Environment and Forests.

28. The respondent authorities have further relied upon the Circulars dated 07.07.2021 and 13.09.2022 to contend that in view of the said Circulars, FC cannot be transferred. It is to be noted that the said circulars have been issued subsequent to the orders of 30.07.2015 passed by the Apex Court in

the case of Samaja Parivartana Samudaya (supra). Besides, the said circulars are not in consonance with the provisions of Section 8B of the MMRD Act.

29. The Apex Court in the case of **GODREJ AND BOYCE MANUFACTURING COMPANY LTD VS. STATE OF MAHARASHTRA AND OTHERS** reported in **(2009) 5 SCC 24** at paragraph 43 and 64 dealing with circulars running contrary to the statutes has held as under;

"43. Mr Desai submitted that in Pune Municipal Corp. v. Promoters and a Builders Assn. this Court held that the Development Control Rules framed under the Maharashtra Regional and Town Planning Act, 1966 had statutory force. On the other hand the circulars issued by the Municipal Commissioner were simply executive instructions. The circulars, therefore, could not override or supersede the provisions of the Regulations. He further submitted that the municipal authorities too were fully aware and conscious of this legal position and had accordingly requested the State Government vide Letter dated 19-7-1997 to suitably modify Para 6 of Appendix VII of the Regulations.

64. Having regard to the nature of the law the submission advanced on behalf of the municipal authority would lead to palpably unjust and inequitable results. The landowner whose land is designated in the development plan as reserved for any of the purposes enumerated in Section 22 of the Act or for any of the amenities as defined under Section 2(2) of the Act or Regulation 2(7) [sic Regulation 3(7)] of the Regulations is not left with

many options and he does not have the same bargaining position as the municipal authority. Therefore, surrender of the land in terms of clause (b) of Section 126(1) of the Act cannot be subjected to any further conditions than those already provided for in the statutory provisions. It is of course open to the legislature to add to the conditions provided for in the statute (or for that matter to do away with certain conditions that might be in existence). But it certainly cannot be left in the hands of the executive to impose conditions in addition to those in the statutes for accepting the offer to surrender the designated land".

30. Thus, in view of the above factual aspect of the matter, the contentions of the State authorities cannot be countenanced.

31. As regards the contention of the State that the relief sought by the petitioners being premature as the State has merely issued show cause notices and that the petitioners can very well issue reply or appear before the concerned authorities instead of approaching this Court, as rightly contended by the petitioners perusal of the show cause notices would indicate that the explanation for delay offered by the petitioners namely, non availability of the FC has been negated and the respondents authorities have

contended as noted above that the petitioners are not entitled for transfer of FC. When the respondent authorities have already expressed their opinion with regard to non accepting reasons offered by the petitioners for delay, relegating the petitioners to the respondent authorities would not meet ends of justice.

32. The Apex Court in the case of **SIEMENS LTD., VS. STATE OF MAHARASHTRA AND OTHERS** reported in **(2006) 12 SCC 33** while dealing with nature of show cause notice, at paragraphs 9 and 10 has held as under;

"9. Although ordinarily a writ court may not exercise its discretionary jurisdiction in entertaining a writ petition questioning a notice to show cause unless the same inter alia appears to have been without jurisdiction as has been held by this Court in some decisions including State of Uttar Pradesh v. Brahm Datt Sharma and Anr. AIR 1987 SC 943, Special Director v. Mohd. Ghulam Ghose and Another, (2004) 3 SCC 440 and Union of India and Another v. Kunisetty Satyanarayana, 2006 (12) SCALE 262], but the question herein has to be considered from a different angle, viz, when a notice is issued with pre-meditation, a writ petition

would be maintainable. In such an event, even if the courts directs the statutory authority to hear the matter afresh, ordinarily such hearing would not yield any fruitful purpose [See K.I. Shephard and Others v. Union of India and Others (1987) 4 SCC 431 : AIR 1988 SC 686]. It is evident in the instant case that the respondent has clearly made up its mind. It explicitly said so both in the counter-affidavit as also in its purported show cause notice.

10. The said principle has been followed by this Court in V.C. Banaras Hindu University and Ors. v. Shrikant [2006 (6) SCALE 66], stating: (SCC p.60, paras 48-49)

"48. The Vice Chancellor appears to have made up his mind to impose the punishment of dismissal on the Respondent herein. A post decisional hearing given by the High Court was illusory in this case.

49. In K.I. Shephard & Ors. etc. etc. v. Union of India & Ors. [AIR 1988 SC 686], this Court held : (SCC p.449, para 16).

"It is common experience that once a decision has been taken, there is tendency to uphold it and a representation may not really yield any fruitful purpose."

33. As regards issuance of order dated 05.12.2022 in the case of petitioner in W.P.No.23151/2022 rejecting the application for transfer of FC on the premise of petitioner requiring to

file fresh application is also unsustainable on the facts situation of the matter. The reasons assigned in the said order is that The Government of India has issued Guidelines on 07.07.2021 for transfer of approvals granted under FC Act, 1980 to new lessees as per MMRD (Amendment) Act, 2021 subject to certain conditions and that by letter dated 13.09.2022 MOEF and CC had issued clarification that the Guidelines dated 07.07.2021 were not applicable in case of a lease which had lapsed or terminated or cancelled by the Central Government or State Government or by any Court of law and therefore a category 'C' mine shall have to apply afresh and transfer in the case was not tenable. This reasoning found at in the impugned order at Annexure-A2 is completely contrary to the facts situation of the matter. At the cost of repetition it is to be noted that the petitioner is also one of the auction purchaser of category 'c' mine which was put to auction pursuant to the orders passed by the Hon'ble Apex Court in the case of Samaja Parivartana Samudaya (supra). The subsequent

circulars/clarifications cannot lend any credence to justify the auction of rejection as done in the instant case.

34. The Apex court in the case of **MOHINDER SINGH GILL & ANR V. CHIEF ELECTION COMMISSIONER, NEW DELHI & ORS** reported in **AIR 1978 SC 851** has held;

" The second equally relevant matter is that when a statutory functionary makes an order based on certain grounds its validity must be judged by the reasons so mentioned and cannot be supplemented by fresh reasons in the shape of affidavit or otherwise. Otherwise, an order bad in the beginning may, by the time it comes to the Court on account of a challenge, get validated by additional grounds later brought out".

35. It is also not in dispute that the erstwhile lessees had been issued/granted approvals by the Ministry of Environment and Forest, Government of India.

36. Thus, a simple reading of the orders passed by the Hon'ble Apex Court with the terms and conditions of the notification inviting tenders as

extracted hereinabove would leave no doubt that the respondent authorities ought to have transferred the FC in favour of the petitioners. The contentions urged by the respondent authorities that the transfer of FC is subject to certain conditions, such as fulfillment of the conditions by the erstwhile lessee with regard to compensatory afforestation, production of 50% of notional ore after expiry of 18 months and requirement of payment of 50% production to be condition precedent for transfer of FC in favour of the petitioners, in our considered opinion, is innovative and do not find place either in the order of the Hon'ble Apex Court or in the terms of the notification. It may be that the subsequent transferee of the Category 'C' lessees would be bound by the conditions of FC and fulfillment of terms thereof, but to say that non-fulfillment of such conditions by the previous lessees would be a bar to seek transfer of said FC by the subsequent lessee cannot be accepted, because if that was the condition, the same would have found mention in the order passed by the Apex Court or in the terms

and conditions of the Notification. Learned Additional Government Advocate as well as learned Standing Counsel for Union of India are unable to give any plausible reasons and explanation in this regard except referring to condition No.10 governing auctioning of Category 'C' leases.

37. Yet another circumstance to be noted is with regard to issuance of show cause notices. When the petitioners from the inception have been requesting and demanding issuance of FC enabling them to commence production after obtaining permission and the same not having been considered by the respondent authorities, it would not be prudent to expect the petitioners to comply with condition No.10 governing the auction. This is particularly in view of special circumstances of petitioners participating in the bidding process of Category 'C' leases in view of the order passed by the Hon'ble Apex Court.

38. For the aforesaid reasons and analysis, we proceed to pass the following;

ORDER

- (1) The writ petitions are partly allowed.
- (2) (a) The show cause notices dated 13.06.2022 issued to the petitioners in W.P.Nos.14760/2022 and 14795/2022 are quashed.

(b) The respondent Nos.1 and 3 are directed to submit the proposal to respondent No.2 to transfer FC which was issued in respect of the erstwhile lessees pertaining to M.L.No.2563 and M.L.No.2148 respectively in favour of petitioners in W.P.Nos.14760/2022 and 14795/2022 and respondents are further directed to transfer the same in accordance with law.

(c) The respondents are directed to extend the term of Letter of Intent until issuance of FC in favour of the petitioners.

(3) (a) The Communication dated 05.12.2022 issued as per Annexure-A2 in W.P.No.23151/2022 is quashed.

(b) The respondent Nos.5 and 6 are directed to submit the proposal of the petitioner for transfer of FC/permission granted in favour of Sri. Srinivasulu in respect of M.L.No.2631 to the petitioner and to transfer the FC/permission in accordance with law.

**Sd/-
CHIEF JUSTICE**

**Sd/-
JUDGE**

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