Reportable

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO(S). 2818 OF 2015
(@ SLP (C) NO(S).32226 OF 2009)

M/s. Muneer Enterprises ....Appellant

VERSUS

M/s Ramgad Minerals and Mining Ltd. & Ors. ....Respondents

J U D G M E N T

Fakkir Mohamed Ibrahim Kalifulla, J.

1. Leave granted.

2. This appeal is directed against the common judgment dated 26.08.2009, passed in W.A.No.5377 of 2004 and W.P.No.23782 of 2005.

3. The writ appeal was preferred by the first respondent herein against the judgment in W.P.No.31690 of 2003 of the learned Single Judge dated 10.11.2004 in and by which the order of transfer of mining lease from the original licencee M/s. Dalmia Cements

(Bharat) Limited (hereinafter called "M/s. Dalmia") to and in favour of the first respondent herein was set aside.

4. Writ petition in W.P.No.23782 of 2005 was filed by one Dinesh Kumar Singhi, a mine operator praying for a direction to the State of Karnataka and Director of Mines and Geology to dispose of his application dated 03.05.2001 for grant of licence to operate 819.20 acres of the forest mining area in Jaisinghpur village covered by the erstwhile mining lease No.M.L.No.2010 of M/s. Dalmia. We are not concerned with the said writ petition, as the said writ petitioner has not challenged the order of the Division Bench by which his writ petition was dismissed. We are only concerned with the judgment in W.A.No.5377 of 2004.

5. Having regard to the chequered history of this case, the detailed facts pertaining to the grant of mining lease with reference to M.L.No.2010 over an extent of 331.50 hectares (819.20 acres) of forest area in Jaisinghpur village, R.M.Block, Sandur Taluk, Bellary District has to be necessarily stated. The said mining lease was originally granted in favour of M/s. Dalmia on 25.11.1953. The said lease expired on 24.11.1983. Based on the application of M/s.Dalmia Cements, the mining lease was renewed for 20 years with retrospective effect from 25.11.1983 by an order dated 07.03.1986.

It is required to be noted that though Forest (Conservation) Act, 1980, hereinafter called "The Forest Act, 1980" came into force w.e.f. from 25.10.1980, the requirement of prior approval of the Central Government as prescribed in Section 2 of the said Act was not taken at the time of first renewal.

6. Be that as it may, the effect of non-compliance of approval under Section 2 of the Forest Act, 1980 was the subject matter of consideration of this Court in the decision reported in **T.N. Godavarman Thirumulkpad v. Union of India & Ors.**- (1997) 2 SCC 267 (**Godavarman I**). By virtue of the said judgment, the Director of Mines and Geology, the third respondent herein directed M/s.Dalmia to stop all mining activities by its order dated 25.01.1997. M/s.Dalmia stopped its mining activities from January 1997. Based on the subsequent judgment of this Court in **T.N. Godavarman Thirumulkpad v. Union of India & Ors.** - (1997) 3 SCC 312 (**Godavarman II**), the Ministry of Environment and Forest (MOEF) granted conditional in-principle (Stage-I) approval for renewal of M/s. Dalmia's mining lease over 201.50 hectares of forest land out of 331.50 hectares by an order dated 24.12.1997.

7. By its letter dated 16.04.1999, M/s. Dalmia surrendered 196.58 hectares of land out of the leased area of 331.50 hectares to the

Forest Department of the State Government. Subsequently, M/s. Dalmia in its letter dated 27.03.2001, expressed its desire to surrender the remaining area held by it indicating that such notice being given for determination of the lease as required under the terms of the mining lease deed and that the lease would expire after 12 months notice period from 01.04.2001 or any time earlier if permitted by the State Government. In response to M/s.Dalmia's letter dated 27.03.2001 by letter dated 25.05.2001, the office of the Director of Mines while communicating to one of its officers marked a copy of its letter dated 25.05.2001 calling upon M/s.Dalmia to surrender its lease deed book and mining plan. By letter dated 16.06.2001 M/s.Dalmia surrendered the lease deed book and informed that its mining plan was missing.

8. Subsequently, one M.S.P.L. Limited, through its Executive Director Mr. Rahul Baldota applied for grant of mining lease of the area held by M/s.Dalmia through its application dated 21.07.2001. It is necessary to be noted that the said Rahul Baldota is the husband of Mrs. Lavine R. Baldota the Executive Director of the first respondent herein. In the application of M/s M.S.P.L. limited dated 21.07.2001 it was noted by the Director of Mines and Geology, namely, one Dr.Reddy on 25.08.2001, stating among other things

that grant of mining lease of surrendered lands can only be considered as specified in Rule 59(1) of the Mineral Concession Rules.

9. Pursuant to such steps taken by M/s.Dalmia in its letter dated 27.03.2001, the suit bearing O.S.No.53 of 1993 filed against the appellant herein relating to boundary dispute of the mines held by it was dismissed for non-prosecution on 26.09.2001. By letter dated 09.01.2002 , the Director of Mines and Geology directed its Deputy Director, Hospet to survey and demark the area covered by lease deed of the appellant specifically pointing out the dismissal of O.S.No.53 of 1993 by M/s.Dalmia.

10. On 30.01.2002, M/s.Dalmia made a payment of Rs.22,332/- stated to be the arrears in respect of mining lease held by it in M.L.No.2010. On 31.01.2002, the Director of Mines and Geology issued a no due certificate to M/s.Dalmia confirming the receipt of a sum of Rs.22,332/- by way of Demand Draft from M/s.Dalmia. However on 04.02.2002, M/s.Dalmia applied to the State Government for permission to transfer its mining lease M.L.No.2010 of 2010 including the 196.58 hectares said to have been surrendered by it in 1999 to the first respondent herein. On 06.02.2002 the Director of Mines and Geology viz. Dr.Reddy who in

his earlier communication dated 25.08.2001 to M/s.M.S.P.L. Limited informed that Rule 59(1) of Mineral Concession Rules would apply for grant of licence in M.L.No.1020, this time recommended for the transfer of licence from M/s.Dalmia to the first respondent herein. On 16.03.2002, the State Government passed orders allowing the application for transfer of mining lease as applied for by M/s Dalmia in favour of the first respondent.

11. It was in the above stated background at the instance of the appellant, the order dated 16.03.2002, of the State Government was challenged in W.P.No.31690 of 2003 in the High Court of Karnataka. The learned Single Judge of the Karnataka High Court allowed the said writ petition, by order dated 10.11.2004. Challenging the same, the first respondent preferred writ appeal in W.A.No.5377 of 2004. By the order impugned in this petition, the Division Bench having set aside the order of the learned Single Judge and restored the order of transfer dated 16.03.2002, the appellant has come forward with this appeal.

12. When the writ appeal was pending, based on the oral application of the first respondent herein, the Division Bench directed the State Government and the Director of Mines and Geology to process its application for transfer of the renewal of the

lease in favour of the first respondent under the Forest Act, 1980 within two months and forward its report to the Central Government with a further direction to the Central Government to decide the same within three months. The appellant challenged the said order dated 19.04.2006 in S.L.P.No.11508 of 2006. By an order dated 26.10.2007, this Court directed the Division Bench of Karnataka High Court to dispose of Writ Appeal No.5377 of 2004 and that the order of the Central Government dated 13.09.2006 granting its in-principle (Stage I) *ex post facto* approval granted in favour of the first respondent would not create right/equity in favour of the first respondent. By the impugned order dated 26.08.2009, the Division Bench held that renewal of mining lease without obtaining prior approval under Section 2 of the Forest Act, 1980 would not render such renewal *void ab initio* and any such illegality can be cured or regularized by the Central Government by passing an order under Section 2 of the Forest Act, 1980 *ex post facto*.

13. When this Special Leave Petition was entertained, by an order dated 16.12.2009, it was directed that processing of Stage II clearance be continued with a further direction to maintain status quo as regards the mining activities. By order dated 09.09.2010, Stage II clearance has also been granted in favour of the first

respondent and by subsequent order dated 23.09.2010, this Court has directed that the status quo should remain operative pending the Special Leave Petition.

14. In the above stated background, we heard Mr.Kapil Sibal, learned senior counsel for the appellant, Mr.K.K.Venugopal and Mr.Krishnan Venugopal, learned senior counsel for the first respondent, Dr.Abhishek Manu Singhvi, learned senior counsel for the fifth respondent in the writ appeal who was not added as a party respondent in this Special Leave Petition and Ms.Anitha Shenoy, Advocate-on-Record for the State of Karnataka and the Director of Mines and Geology. Mr.J.S. Attri, learned senior counsel who appeared for the Union of India, the fourth respondent.

15. Mr.Kapil Sibal, learned senior counsel appearing for the appellant contended that once M/s.Dalmia surrendered its lease in respect of M.L.2010, which surrender has become final and conclusive, there was no scope for transfer of such surrendered mining lease in favour of the first respondent herein. The learned senior counsel then contended that assuming the surrender has not come into effect, at the time of first renewal when in-principle stage-I approval was granted by the Central Government through MOEF in its order dated 24.12.1997, imposing very many conditions and

since M/s.Dalmia failed to comply with those conditions within five years of the said order viz., 23.12.2002 and that the first renewal so granted also expired in November 2003, by which time also the conditions imposed in the in-principle stage-I approval was not complied with, there was factually no renewal of the mining lease which stood expired initially on 24.11.1983 and in any event after the expiry of the first renewal viz., 24.11.2002.

16. The learned senior counsel further contended that there should have been no second renewal or grant of in-principle stage-I clearance after 23.12.2002 as well as by the present order dated 13.09.2006. The learned senior counsel contended that under Rule 59 of Mineral Concession Rules, when once the mining lease was surrendered by M/s.Dalmia and when surrender has come into effect thereafter, for subsequent grant of mining lease, the procedure prescribed in the said Rule has to be followed and the order of the State Government in having passed its order dated 16.03.2002 transferring the mining lease from M/s.Dalmia to the first respondent was wholly illegal and *void ab initio*.

17. The learned senior counsel by referring to Rule 37 and Rule 29 of the Mineral Concession Rules, submitted that in the light of the surrender of the mining lease by M/s.Dalmia, there was no right in

M/s.Dalmia to apply for transfer in favour of the first respondent. He further contended that by virtue of the provision contained in Rule 29 of the Mineral Concession Rules, the mining lease was determined by M/s.Dalmia and in such circumstances by virtue of Section 19 of the Mines and Minerals Development and Regulations Act any mining lease in contravention of the Act and Rules would be *void ab initio*. The learned senior counsel contended that, therefore, the so-called acquisition of mining lease of M/s.Dalmia by the first respondent was void.

18. Dr. Abhishek Manu Singhvi, learned senior counsel for the intervenor submitted that since the said applicant was added as the fifth respondent before the Division Bench by order dated 08.06.2007, it was entitled to get intervened in this appeal. Though the application for intervention was stoutly opposed on behalf of the first respondent by referring to certain earlier orders of this Court in the S.L.Ps. filed by the intervenor, since the said intervenor was added as the fifth respondent by the first respondent itself in the writ appeal, which was pending before the Division Bench, we are of the view that due to failure of the appellant in not impleading the intervenor as a party respondent in this appeal, it should not be deprived of its right to be heard in this appeal. Therefore, without

any scope for anyone to quote as a binding precedent in any other case, having regard to the peculiar facts of this case where the intervenor was a party respondent before the Division Bench in the Writ Appeal, the order of which is the subject matter of challenge in this appeal, we are of the view that the intervenor can be permitted to make its submissions and the I.A. for intervention stands allowed.

19. Dr. Abhishek Manu Singhvi, learned senior counsel in his submissions contended that by virtue of Rule 29 read along with Rule 59 of Mineral Concessions Rules the determination of the lease at the instance of M/s.Dalmia having come into effect, nothing would survive thereafter. According to the learned senior counsel, the period of twelve months prescribed in Rule 29 cannot enure to the benefit of the lessee and that such time period was meant for the benefit of the State Government.

20. The learned senior counsel by referring to various dates from 27.03.2001 upto 31.01.2002 submitted that the State Government understood the determination of the lease correctly as intended by M/s.Dalmia and, therefore, when once the mining lease got terminated by virtue of the complete surrender nothing would survive thereafter. Dr.Singhvi thus contended that if the sequence of events after the surrender had taken place are noted, viz., the

application made by M/s.M.S.P.L. on 21.07.2001 at the instance of Mr.Rahul Baldota as the Executive Director of M/s.M.S.P.L. which was rejected by the Director of Mines and Geology by order dated 25.08.2001, the signatory of which was one Dr.Reddy, the subsequent application at the instance of M/s.Dalmia for transfer in favour of the first respondent who was represented by its Executive Director Mrs.Baldota who was none other than the wife of Mr.Rahul Baldota whose earlier application for grant of mining lease was rejected, it would show that all was not well in the passing of the order of transfer dated 16.03.2002. In this connection, the learned senior counsel pointed out that the very same Director of Mines and Geology, Dr.Reddy who by his order dated 25.08.2001 rejected the application of M/s.M.S.P.L. for grant of mining licence on the ground that such grant can be considered only by following Rule 59, took a diametrically opposite stand when he recommended for transfer of surrendered mining lease in favour of the first respondent and thereby serious fraud has been committed by the first respondent in connivance with M/s.Dalmia, the first respondent and the officers of the State Government. The learned senior counsel would contend that such an action of the parties would amount to collusion

between the first respondent and the officials of the State Government which should not be allowed to remain.

21. Dr.Singhvi, learned senior counsel then contended that there were serious violations of Forest Act of 1980 on which ground as well the order of transfer dated 16.03.2002 cannot be sustained. The learned senior counsel pointed out that the first renewal of the mining lease in M.L.No.2010 of 2010 was for the period between 25.11.1983 to 24.11.2003, which was granted on 07.03.1986 retrospectively from 25.11.1983 and that no prior approval as prescribed in Section 2 of the Forest Act, 1980 was obtained. The learned senior counsel further contended that the said violation of the Forest Act, 1980 would strike at the root of the case and in effect the very first renewal was void.

22. The learned senior counsel then contended that out of 331.50 hectares M/s.Dalmia surrendered 196.58 hectares of land as early as on 16.04.1999 and that what remained was only 134.92 hectares for which there was no *ex post facto* approval. The learned senior counsel then contended that subsequently by an order dated 24.12.1997, MOEF granted in-principle stage-I approval imposing conditions in respect of 201.50 hectares to M/s.Dalmia and the

conditions not having been complied with by M/s.Dalmia, the licence could not have remained in force any further.

23. The learned senior counsel then contended that grant of *ex post facto* approval by the Central Government as per the direction of this Court in Godavarman judgments cannot be granted on every occasion when the violation had taken place. According to the learned senior counsel, the grant of such *ex post facto* approval as per the directions of this Court having been already considered and granted on 24.12.1997 and due to failure of compliance of the conditions imposed in the said order, the lease had become inoperative, there was no scope for grant of any further *ex post facto* approval after the expiry of the first renewal viz., 23.11.2003.

24. The learned senior counsel placed reliance upon the decisions reported in **A. Chowgule and Company Limited v. Goa Foundation & Ors.** - (2008) 12 SCC 646, **Nature Lovers Movement v. State of Kerala and Ors.** - (2009) 5 SCC 373 and **K. Balakrishnan Nambiar v. State of Karnataka and Ors.** - (2011) 5 SCC 353 in support of his submissions.

25. On Rule 59, according to the learned senior counsel the said Rule provides for common hotchpot for the Government and that

once the lease was surrendered by M/s.Dalmia, the State had become the owner of the land and any further grant of mining lease can only be in accordance with Rule 59(1) by way of public auction and, therefore, the acceptance of the transfer applied for by M/s .Dalmia in favour of the first respondent in the order dated 16.03.2002 cannot be approved. The learned senior counsel also relied upon the decisions reported in **Janak Lal v. State of Maharashtra & Ors.** - (1989) 4 SCC 121, **Bangalore Development Authority v. Vijaya Leasing Limited & Ors.** - (2013) 14 SCC 737, **Ram Preeti Yadav v. U.P. Board of High School and Intermediate Education and Ors.** - (2003) 8 SCC 311 and **Bhaurao Dagdu Paralkar v. State of Maharashtra & Ors.** - (2005) 7 SCC 605 in support of his submissions.

26. As against the above submissions, on behalf of the first respondent Mr. K.K. Venugopal and Mr. Krishnan Venugopal, learned senior counsel made their submissions. The submission of Mr. K.K. Venugopal was that the appellant had committed serious violation of the Mines and Minerals Development and Regulations Act and its Rules as well as the provisions of the Forest Act by indulging in encroachment of forest land as well as the lands originally held by M/s.Dalmia now held by the first respondent which amounted to

looting of the wealth of the nation and consequently they had no locus to challenge the order of transfer dated 16.03.2002.

27. As far as the intervenor is concerned, the learned senior counsel by referring to some of the earlier orders of this Court passed in S.L.Ps. preferred by the intervenor himself submitted that having failed in its attempt to get impleaded, he has come forward with this intervention application and, therefore, he should not be heard.

28. As far as the question of surrender was concerned, according to Mr.K.K.Venugopal, it was a mixed question of fact and law. According to him, even while examining the factual surrender at the instance of M/s.Dalmia, when the provisions of Mines and Minerals Development and Regulations Act and the Mineral Concession Rules, in particular Rule 29 read along with the terms and conditions in the mining lease are examined, it would show that such prescriptions were mandatory; negatively couched, and, therefore, unless twelve months notice period is completed, there would have been no scope for anyone to contend that the lease had come to an end. The learned senior counsel contended that if the licencee intends to surrender the mining lease, they should have submitted to the State Government or such officer or specified authority competent to accept such surrender and when any third party

alleges the surrender to have come into effect, the burden was heavily upon the said third party to prove the same. In so far as the alleged surrender of M/s.Dalmia is concerned, the learned senior counsel contended that no surrender had taken place in the eye of law, in as much as, such surrender was not carried out by M/s.Dalmia strictly in accordance with Rule 29 of Mineral Concession Rules and that 12 months period has also not expired before the transfer in favour of first respondent was effected.

29. Mr.Krishnan Venugopal, learned senior counsel in his submissions stated that the Director of Mines and Geology had no power to accept the surrender and, therefore, there was no scope to contend that the surrender was accepted before the expiry of 12 months. After referring to the relevant Notifications passed under Section 26(2) of the Mines and Minerals Development and Regulation Act, the learned senior counsel pointed out that there was no delegation of power made in favour of the Director of Mines and Geology in contemplation of Rule 29 of the Mineral Concession Rules and therefore he was not the competent authority. It was contended that if at all the surrender could have been effected, the same could have been effected only with the State Government and that too by passing a positive order by the State accepting such

surrender. The learned senior counsel contended that the letter dated 25.05.2001 can never be taken as an order of acceptance of surrender. The learned senior counsel relied upon the decisions reported in **Sandur Manganese and Iron Ores Limited v. State of Karnatala and Ors.** - (2010) 13 SCC 1, **Sethi Auto Service Station and Anr. v. Delhi Development Authority & Ors.** - (2009) 1 SCC 180 and **Shanti Sports Club & Anr. v. Union of India & Ors.** - (2009) 15 SCC 705 in support of his submissions.

30. He also contended that after the Forest Conversion (Amendment) Rules, 2014 in particular Rule 8(3)(a) & (d) old Rules 6 and 7 were substituted and new Rules 6, 7 and 8 were brought in and by virtue of the newly amended Rules, the consequence of non-compliance of Section 2 of the Forest Act, 1980 would not ipso facto make the lease *void ab initio* except that the mining operation will have to be stopped and after complying with the conditions, the lessee will have to start afresh by getting the clearance under Section 2 of the Forest Act, 1980. The learned senior counsel also contended that under the MMDR Act, the only provision under which the lease will become void is Section 19 and therefore the contention of the appellant that non-compliance of Section 2 of the Forest Conservation Act would render the lease *void ab initio*

cannot be accepted. He also contended that with the first renewal of the lease by an order dated 07.03.1986 the lease was renewed from 25.11.1983 to 24.11.2003, that on 04.02.2002, itself i.e., long before 12 months prior to the expiry of the renewed lease, application for transfer was made, that on 16.03.2002 itself the State Government passed an order of transfer of the lease and in the circumstances by virtue of Rule 24(A)(1) read along with Rule 26(1) of the Mineral Concessions Rules, the right for renewal continued to exist and that no order of rejection of renewal under Rule 26(1) was ever passed. It was, therefore, contended that as on date the right of renewal was subsisting and it continue to subsist.

31. The learned senior counsel contended that MMDR Act and Forest Conversion Act, 1980 function in two different fields in the sense that the existence and continuance of the lease and right of renewal are independent of the approval to be received under the Forest Act, 1980, that the consequence of violation of Section 2 of the Forest Act, 1980 will not ipso facto determine the lease and make it void and that only other consequence would be as provided under Section 3(A) of the Forest Act, 1980. As far as renewal of the lease is concerned, according to the learned senior counsel, the

same is exclusively under MMDR Act and once the lessee complies with the requirements under the Forest Act, 1980 the right of renewal of the lease would get automatically revived.

32. On the question of voidness, the learned senior counsel by referring to the decisions in **Smt. Lila Gupta v. Laxmi Narain & Ors. -** (1978) 3 SCC 258 and **Pankaj Mehra & Anr. v. State of Maharashtra & Ors. -** (2000) 2 SCC 756 contended that equity is in favour of the first respondent to sustain the lease and this is a fit case to affirm the Section 2 approval and in the alternative to permit the first respondent to apply under Section 2 for compliance.

33. By referring to Rule 29 of the Mineral Concession Rules, the learned senior counsel would contend that the prescription of 12 months notice period in the said Rules is mandatory and has got a purpose and intent and therefore unless the 12 months period expires, after the lessee expressed its desire to surrender the lease and that too such notice of termination is submitted before the competent authority as prescribed under Rule 29, it cannot be held that surrender would take effect the moment such a notice is submitted by the lessee to some incompetent authority.

34. The learned senior counsel summarized his submissions on the question of surrender by contending that the return of the Lease Book by itself would not confirm the case of surrender unless the period of 12 months as prescribed under Rule 29 expired, that even if it is to be stated that the State Government waived the 12 months period, unless there is a specific order accepting the surrender, it cannot be held that the surrender had come into effect. The learned senior counsel also submitted that there was no evidence to show that such acceptance of surrender in the form of an order of the State Government was issued. It was therefore contended that there is no scope for inferring any such surrender based on certain communications addressed to the authorities and the copies marked to the lessee. As far as the no due certificate was concerned, the learned senior counsel contended that the same was made four days prior to the application of transfer and the payment was meant for the purpose of effecting the transfer.

35. Countering the submissions of the learned senior counsel for the first respondent Mr.Kapil Sibal submitted that in the decision reported in **Basheshar Nath v. Commissioner of Income Tax, Delhi and Rajasthan & Anr. -** AIR 1959 SC 149, the Constitutional Bench has held that the right of waiver can be exercised by the

State and submitted that reading the said judgment in the light of Rule 29 read along with paragraph 4 of the licence conditions contained in Form K. Waiver exercised by the State while accepting the surrender before 12 months under Rule 29 was valid in law. The learned counsel also relied upon the decisions reported in **Commissioner of Customs, Mumbai v. Virgo Steels, Bombay & Anr.** - (2002) 4 SCC 316 and **Vasu P. Shetty v. Hotel Vandana Palace & Ors.** - (2014) 5 SCC 660.

36. As against the arguments of the learned senior counsel for the first respondent that any surrender should be made to the concerned authority and should be accepted only by the competent authority, Mr.Sibal submitted that surrender was made to the State Government as disclosed in the statement of objections submitted on behalf of the State Government, wherein, in paragraph 5 the State Government itself has accepted that M/s. Dalmia made its application dated 27.03.2001 to the State Government proposing to surrender the lease held by it w.e.f 01.04.2001 and also subsequently surrendered the Mining Lease Book to the State Government. The learned counsel however pointed out that though in the said paragraph 5, it was stated that the said application was not considered and the State Government did not pass any orders

accepting the surrender of the mining lease, the learned senior counsel pointed out that the grant of lease was by the Director of Mines as disclosed in Form K of the mining lease which states that the term lessor included its successors/assignees and also in the condition for the determination of lease, it was the Director of Mines who has affixed his signature. The learned senior counsel contended that going by the opening set of expressions in Form K deeming fiction would operate and the Director of Mines was the authority who was competent to accept the surrender. The learned senior counsel also contended that this question was never raised at the instance of the first respondent and in the absence of proper pleading before the High Court, the first respondent cannot be permitted to raise the said issue which is a mixed question of fact and law.

37. As regards the argument that surrender, whether it was accepted and that too by a written order, the learned senior counsel contended that acceptance of such surrender before expiry of twelve months can also be gathered from the conduct of the parties unless there is a statutory requirement. The learned senior counsel after referring to the sequence of correspondence which emanated from M/s.Dalmia's letter dated 27.03.2001, the reply from the office

of the Director of Mines and Geology dated 25.05.2001, M/s.Dalmia's letter dated 16.06.2001, the dismissal of the suit by M/s.Dalmia dated 26.09.2001 and the no dues certificate issued by the State Government on 31.01.2002 contended that the same sufficiently disclosed that the lease was not only surrendered it was also acted upon by the concerned authority.

38. As regards the contention of the first respondent that non-compliance of Section 2 of the Forest Act, 1980 can have no implication insofar as it related to the validity of the lease granted under the Mines and Minerals (Development and Regulations) Act, Mr.Sibal, learned senior counsel would contend that the said submission cannot be accepted. According to the learned senior counsel, even before coming into force of the Forest Act, 1980 under the proviso to Section 5 of the Mines and Minerals (Development and Regulations) Act the requirement of Central Government's approval was mandatory which came to be imposed as a statutory condition in respect of the forest land under Section 2 of the Forest Act, 1980. The learned senior counsel therefore contended that the requirements of approval to be granted by the Central Government being a statutory requirement, one made under the Mines and Minerals (Development and Regulations) Act as well as under the

Forest Act, 1980, the operation of the mining lease cannot be carried out without the prior approval of the Central Government under the Forest Act, 1980. In other words, according to the learned senior counsel, the requirement of approval under the Forest Act, 1980 has to synchronize with the mining lease if the leaseholder wants to carry on mining operation in respect of the minerals specified in the first schedule of the Mines and Minerals (Development and Regulations) Act. The learned senior counsel contended that the only exception provided was under the judgments of this Court in **Godavarman I** and **II (cited supra)** which was by virtue of the extraordinary Constitutional power vested in this Court under Article 142 and under no other circumstance the mining operation can be carried on even if one were to possess the licence under the Mines and Minerals (Development and Regulations) Act.

39. The learned senior counsel pointed out that after the in-principle Stage-I approval granted on 24.12.1997, when M/s.Dalmia failed to comply with the conditions imposed till the expiry of the first renewal which occurred on 24.11.2003, any attempt on behalf of the first respondent through its communication dated 11.05.2004, based

on the order of transfer dated 16.03.2002, could not have validated the lease which already got lapsed on its own.

40. Mr.Sibal, learned senior counsel then contended that when the writ petition was pending before the High Court, on behalf of the Central Government, Ministry of Environment and Forest raised its objections as disclosed in its objections dated 03.02.2004, for granting any approval, after the expiry of the first renewal, due to non-compliance of the conditions imposed in the in-principle stage-I approval which weighed with the learned Judge of the High Court when the renewal itself was quashed by the learned Judge in the order dated 10.11.2004. The learned senior counsel then referred to the judgment of the Division Bench in W.A.No.5377 of 2004, the second renewal application and the in-principle stage-I approval subsequently granted on 13.09.2006 and also the order of this Court dated 26.10.2007 which made it clear that the first respondent cannot claim any equity based on the order dated 13.09.2006. The learned senior counsel submitted that, therefore, both the in-principle stage-I approval dated 13.09.2006 as well as the final approval dated 09.09.2010 will be of no avail to the first respondent for getting the surrendered lease revived. The learned senior counsel, therefore, contended that the claim of the first respondent

that the mining lease would be unaffected by the non grant of approval under Section 2 of the Forest Act, 1980 cannot be accepted. The learned senior counsel relied upon the decisions reported in **Ambica Quarry Works v. State of Gujarat & Ors. –** (1987) 1 SCC 213.

41. Mr. Sibal, learned senior counsel lastly contended that Section 10(1) and the second proviso to Section 11 of the Mines and Minerals (Development and Regulations) Act has to be read along with Rules 37 and 59 and contended that the application for transfer under Rules 37(1)(a) or 1(A) cannot be automatically granted. The learned senior counsel submitted that whatever would apply to a fresh application as provided under Section 10(1) and second proviso to Section 11 would equally apply even to the transfer and the application for transfer cannot be granted just for mere asking. The learned senior counsel would therefore contend that under Rule 59, the necessity to notify before the grant of lease is mandatory and there is no question of subverting the said Rule in a case where the lease was surrendered. According to the learned senior counsel in such a case for applying Rule 59, there must be a notification to enable all those interested to stake their claim, which

would enable the State to derive the maximum benefit while permitting mining of minerals, which is a national wealth.

42. Ms. Anitha Shenoy, Advocate-on-Record appearing for the State of Karnataka submitted that the requirement of 12 months notice for determining the lease at the instance of a lessee is mandatory. By referring to Rule 27(2)(l), the learned counsel submitted that the said sub-Rule mandates delivery of possession of land and mines on surrender of the lease and that Clause 4 of Part VIII of Form-K viz., the lease deed specifically states that such determination will take effect after the expiry of such notice. By referring to the communication dated 27.03.2001 of M/s.Dalmia's application for surrender, letter of the Director of Mines to the Senior Geologist dated 25.05.2001, the M/s. Dalmia's letter dated 16.06.2001, surrendering the lease deed book as well as no due certificate issued by the Department of Mines on 31.01.2002, the learned counsel submitted that, in spite of all these communications a specific order of acceptance of surrender was still required which was never issued. To support the said submission, the learned counsel placed reliance upon the earlier communications in the office of the Mining Department pertaining to various other mining lease viz., those dated 12.03.1965, certain other orders passed in

December, 1988 and 11.04.1989 and the Notification dated 19.06.1965 and contended that those communications disclosed specific order of acceptance of surrender issued by the State Government. The learned counsel would therefore contend that in the case on hand, since such a specific order of acceptance of surrender was not issued, it cannot be stated that the surrender as applied for by M/s.Dalmia had taken place.

43. In his reply, Mr.Krishnan Venugopal, learned senior counsel for the first respondent contended that going by the letter of the State of Karnataka dated 21.02.1986, no lease could have been granted or renewed except by the State and not by the Director of Mines. By referring to Section 5 of the Mines and Minerals (Development and Regulations) Act, the learned senior counsel reiterated that the power is vested only with the State and in the absence of any delegation, the Director of Mines will have no jurisdiction or power to issue the lease or determine the lease. The learned senior counsel further contended that by virtue of the Constitutional prescription as contained in the Entries found in List I and List II read along with Section 2 of the Mines and Minerals (Development and Regulations) Act, the subject being controlled by the Parliament, strict compliance of the provisions of the Act is warranted and, therefore,

in the absence of delegation of power with the Director of Mines, it cannot be contended that the exercise of such power by the Director would validate the surrender as claimed by the appellant. The learned senior counsel would therefore contend that the period of 12 months required for determining the lease by the lessee is mandatory and unless and until the said period expires which is for the benefit of the State, it cannot be held that the surrender had come to an end even before the expiry of the 12 months period.

44. In this context, the learned senior counsel referred to the Government of India/Ministry of Environment and Forest letter dated 14.09.2001 to the Secretary (Forest) of all the States and Union Territories, wherein, the Central Government after making reference to various cases where the in-principle stage-I clearance was granted by imposing conditions and the failure of the States and the user agencies in reporting compliance after lapse of five years and in some cases after more than 10 years, the MOEF stated that the Central Government in respect of those cases took a decision to the effect that in all those cases the in-principle approvals though stood revoked summarily, depending upon the interest shown by the State or the user agency in the project, they would be required to submit a fresh proposal which would be considered de novo. The learned

senior counsel further contended that even the Central Government has understood as to the manner in which any fresh proposal to be considered in respect of cases where the user agencies failed to comply with the conditions imposed in the in-principle stage-I approval granted. According to him, such a decision of the Central Government/MOEF was subsequently incorporated in the Forest Conservation Rules by way of amendment to Rules 6, 7 and 8 in the year 2014 and therefore it cannot be held that the non-compliance of the conditions imposed while granting in-principle stage-I approval would in any manner efface the lease granted under the MMDR Act and Mineral Concession Rules.

45. Mr. Kapil Sibal, learned senior counsel while responding to the submissions of Ms. Anitha Shenoy, Advocate-on-Record for the State of Karnataka pointed out that in the documents now produced by the learned counsel for the State which pertained to the years 1965, 1988 and 1989, those documents were signed by the Director while accepting the surrender proposed by the lessees and that such acceptance had been made not after the expiry of the 12 months period from the date of application but before the expiry of such 12 months period. The learned senior counsel also submitted that the State Government has not come forward with any affidavit by any

responsible officer that surrender was not accepted by the State Government. The learned counsel also contended that the lessee viz., M/s. Dalmia wanted to surrender and the fact remains that the lease had been determined. As regards the reference to Rule 27(2)(l) the learned senior counsel contended that though the Rule states that on surrender possession should be delivered, there is no specific expression to the effect that such delivery of possession should be by way of handing over.

46. Two questions that arise for consideration:

a. Whether M/s. Dalmia surrendered its mining licence No.M.L. 2010?

b. If it was not surrendered, whether violation of conditions of in-principle stage-I approval dated 24.12.1997 would ipso facto render the mining licence invalid and inoperative in law?

47. While attempting to find an answer to the above two questions, the submissions of counsel for both sides necessarily postulate consideration and examination of the following factors:

a. Mining lease in M.L. No.2010 of M/s. Dalmia was initially issued on 25.11.1953 which expired on 24.11.1983.

b. First renewal of M.L. No.2010 was by order dated 07.03.1986 for 20 years with effect from 25.11.1983

ending with 24.11.2003 without any statutory approval of the Central Government and in particular the prior approval of Central Government under Section 2 of the Forest Act, 1980.

c. After the judgment of this Court in Godavarman I & II, mining operations under M.L. 2010 were suspended in January, 1997 and thereafter in-principle Stage-I approval was granted in favour of M/s. Dalmia on 24.12.1997 by the Central Government imposing conditions to be complied within five years i.e. on or before 23.12.2002.

d. By letter dated 16.04.1999 M/s. Dalmia surrendered 196.58 Hectares of land out of 331.50 Hectares to the Forest Department of State Government.

e. On 27.03.2001 M/s. Dalmia wrote to Director of Mines and Geology to determine the lease as it wanted to surrender. M/s. Dalmia gave 12 months notice from 01.04.2001 or earlier if permitted by State Government.

f. On 25.05.2001, the Director of Mines while marking a copy of its letter addressed to the senior Geologist to M/s. Dalmia simultaneously instructed to surrender the lease book in respect of M.L. No.2010 along with the Mining Plan.

g. In the order dated 26.06.2001 passed in W.P. No.6304 of 1998 learned Single Judge of Karnataka High Court noted the stand of M/s. Dalmia with reference to M.L. No.2010 that M/s. Dalmia was no longer interested in working of said mines which was adjoining the mines of the appellant. In fact the said writ petition was disposed of by noting the said factor also.

h. On 25.08.2001, the Director of Mines made a note in the application No. 84AML 2001 and 92AML 2001 for grant of mining lease over an area covered by M.L. No.2010 to the effect that the said area was surrendered by M/s. Dalmia, that two applications had been received in respect of the said area, that Rule 59(1) of MCR Rule was attracted and therefore the applications were not considered. The said endorsement was made by Mr. Reddy, the then Director of Mines and Geology.

i. On 26.09.2001, the suit filed by M/s. Dalmia against the appellant in O.S. No.53 of 1993 on the file of Civil Judge, Hospet in respect of the boundary dispute was dismissed for non-prosecution.

j. On 09.01.2002, the Director of Mines ordered the Deputy Director, Hospet to survey and demark the area covered by the appellant's lease, since O.S. No.53 of 1993 was dismissed and M/s. Dalmia surrendered its lease.

k. On 30.01.2002 M/s. Dalmia paid a sum of Rs.22,332.00/- stated to be the arrears in respect of M.L. NO.2010 and obtained no due certificate dated 31.02.2002.

l. On 04.02.2002 M/s. Dalmia applied to the State Government the application for transfer of M.L. No.2010 to the first Respondent.

m. On 06.02.2002, the Director of Mines and Geologist namely the same Mr.Reddy recommended the application for transfer.

n. On 16.03.2002, the State Government allowed the application of M/s. Dalmia in favour of the first Respondent.

o. On 21.07.2002, the Principal Chief Conservation of Forest, Bangalore wrote to the Principal Secretary, Department of Commerce and Industries pointing out the failure of M/s. Dalmia to fulfill the conditions of in-principle stage-I approval dated 24.12.1997 and requested the State Government to withdraw the order dated 16.03.2002.

p. In the Order dated 10.11.2004, learned Single Judge of the Karnataka High Court set aside the order of transfer dated 16.03.2002.

q. Pending first Respondent's W.A. No.5377 of 2004, the Central Government granted in-principle stage-I *ex*

post facto approval to the first Respondent on 13.09.2006.

r. During the pendency of Special Leave Petition, by order dated 09.09.2010 stage II clearance in favour of the first Respondent was granted. But by the Supreme Court's order dated 23.09.2010 the first Respondent was directed to maintain status quo.

s. For transfer of M.L. No.2010 in favour of first Respondent M/s. Dalmia has received a sum of Rs.74,11,559/-.

t. After the order of transfer, the first respondent paid Rs.2,18,42,600/- amount on 11.05.2004 to comply with the condition imposed in the earlier in-principle stage I clearance of 1997 pursuant to order dated 16.03.2002.

48. Having considered the rival submissions of the respective counsel, the following questions arise for consideration:

i. Whether M/s. Dalmia surrendered the mining lease bearing No.M.L.2010 and whether such surrender has become final leaving no scope for M/s. Dalmia to transfer it in favour of the first respondent?

ii. Whether for the purpose of surrender of a mining lease to come into effect the expiry of the period of 12 months from the alleged date of surrender is mandatory or not?

iii. Whether there was surrender of 196.58 hectares of forest land made by M/s. Dalmia on 16.04.1999 out of the total extent of 331.50 hectares and thereby what remained with M/s. Dalmia was only 134.92 hectares for which also there was no *ex post facto* approval by the MOEF?

iv. Whether the act of surrender in order to become complete should have been accepted by the State?

v. Whether pursuant to the act of surrender, delivery of possession is mandatory under Rule 27(2)(l) of the Mineral Concession Rules?

vi. Even if surrender has not taken place by reason of the non-compliance of in-principle stage-I approval granted in the order dated 24.12.1997 whether the mining lease stood automatically expired on 24.11.2003?

vii. Whether by virtue of Rules 29 and 37 of the Mining Concession Rules read with Section 19 of the MMDR Act any mining lease in contravention of the Act become *void ab initio*?

viii. Whether after the coming into force of the Forest Act of 1980 when approval under Section 2 of the said Act is mandatory, can it be said that there could be any scope for *ex post facto* approval in violation of the said provision. Whether the order of

Godavarman case can be relied upon for subsequent renewals?

ix. Whether after the newly amended Forest Conservation Rules 6, 7 and 8 non-compliance of Section 2 of the Forest Act would still make the lease *void ab initio*?

x. Whether right of renewal of the lease under MMDR Act and the action of grant of approval under the Forest Act are independent and one does not affect the other?

xi. Whether based on the requirement of Central Government approval under Section 5 of the MMDR Act which was existing prior to the coming into force of the Forest Act, 1980, can it be said that such a requirement is now made as a mandatory one under Section 2 of the Forest Act for a mining lease to remain valid?

xii. Whether Section 10(1) and the second proviso to Section 11 of the MMDR Act as well as Rule 37 and 59 of the Mineral Concession Rule mandatory to the effect that any transfer applied for under Section 37 (1)(a) cannot be automatically granted?

xiii. Whether the order of transfer dated 16.03.2002 was bonafide taking into account the sequence of events?

xiv. Whether the transfer of lease by order dated 16.03.2002 can be held to be valid since such transfer order came to be passed before the expiry of the first renewal, namely, before 24.11.2003?

xv. Whether the stage-I approval dated 13.09.2006 and the final approval dated 09.09.2010 can be held to be valid in the light of the order of this Court dated 26.10.2005?

49. In order to consider the first question as to whether M/s. Dalmia surrendered the mining lease M.L. No.2010 and whether such surrender has become final and conclusive, we have to recapitulate certain basic facts relating to the said lease. The said lease M.L. No.2010 was granted on 25.11.1953 for 30 years and the extent of land was 331.50 hectares covering 819.20 acres of forest land in Jaisinghpur village R.N. Block, Sandur Taluk, Bellary District. The said initial lease period expired on 24.11.1983 and by order dated 07.03.1986 the lease was renewed for another 20 years retrospectively from 25.11.1983, which was to expire by 24.11.2003. The relevant fact to be noted is that by the time the lease expired on 24.11.1983, the Forest Act 1980 had come into force and under Section 2 of the Forest Act in order to carry on any further mining activity in the entirety of the 331.50 hectares of land covered by M.L.No. 2010, the prior approval of the Central Government was

necessary and required. It is not in dispute that when the mining lease was renewed by order dated 07.03.1986 by the Department of Mines of the State Government, Section 2 of the Forest Act of 1980 was not complied with. It remained unnoticed till the issue came to be considered by this Court in the judgment concerned in **Godavarman-I**. By virtue of the direction issued by this Court all the mines, which did not comply with the requirement of Section 2 of the Forest Act were directed to stop all their mining activities. Consequently by order dated 25.01.1997 the second respondent herein namely Director of Mines and Geology called upon M/s. Dalmia to stop all mining activities pertaining to M.L. No.2010 and the mining activities were stopped by M/s. Dalmia. Thereafter, by the **Godavarman-II** judgment, which is reported in (1997) 3 SCC 312, the MOEF was directed to consider those applications for *ex post facto* approval. Pursuant to the said direction of this Court, by order dated 24.12.1997, MOEF granted conditional in-principle stage-I approval for the renewal of M/s. Dalmia's mining lease for an extent of 201.50 hectares of forest land. The said stage-I approval was subject to fulfillment of specific conditions within six months from the date of the order. It was also specifically mentioned that only after receipt of compliance report of the conditions stipulated in

the stage-I approval, consideration for grant of final approval under Section 2 of the Forest Conservation Act would be made and issued. After the receipt of the order dated 24.12.1997 M/s. Dalmia surrendered 196.58 hectares of land out of 331.50 hectares to the forest department of the State Government through their letter dated 16.04.1999. By virtue of the said surrender made by M/s. Dalmia out of 331.50 hectares the M/s. Dalmia can be said to have retained only 134.92 hectares for its mining operations. Be that as it may, on 27.03.2001 M/s. Dalmia wrote to the Directors of Mines and Geology expressing its decision to determine the lease and surrender the remaining area and gave notice as required under the terms of the mining lease deed for determination of the lease. In the said letter M/s. Dalmia mentioned that such determination of lease would take effect upon expiry of 12 months notice period from 01.04.2001 or earlier if permitted by the State Government.

50. In response to the said communication of M/s. Dalmia, the State Government through the office of the Director of Mines and Geology in its letter dated 25.05.2001 addressed to the Senior Geologist of the State Government stated that M/s. Dalmia has stopped all its mining activities from 1997 and that it has now expressed in its letter dated 27.03.2001 to surrender the lease, namely, M.L.No.

2010 even earlier than the 12 months period and called upon the said officer to intimate as to whether any arrears were due and payable by M/s. Dalmia for taking further action. Copy of the said communication dated 25.05.2001 was also sent to M/s. Dalmia for information and also by way of instructions to surrender the lease deed book in respect of M.L.No. 2010 along with the mining plan approved by Indian Bureau of Mines immediately for taking further action. In response to the said letter of Director of Mines and Geology M/s. Dalmia forwarded its letter dated 16.06.2001 directly addressed to the Director of Mines and Geology mentioning that as instructed by the said authority, they surrender the lease deed book, namely, M.L.No. 2010. The said letter further stated that the mining plan was not available with them. It was specifically mentioned at the bottom of the said letter that mining lease deed book was being enclosed along with the said letter.

51. When we make a reference to M/s. Dalmia's earlier letter dated 16.04.1999, the intention of M/s. Dalmia of its decision to surrender 196.58 hectares out of 331.50 hectares was explicitly stated. If the said decision taken by M/s. Dalmia is accepted which decision was clearly spelt out in the said communication dated 16.04.1999 what was really retained by it subsequent to the stage-I in-principle

approval of MOEF dated 24.12.1997 was only 134.92 hectares. In fact, it is mentioned therein that originally an area of 130 (331.50 – 130 = 201.50) hectares was already surrendered by it prior to 16.04.1999, that virgin area not broken up in an extent of 66.58 hectares was being surrendered as disclosed in the letter dated 16.04.1999 and consequently what was practically retained by it was only 134.92 hectares. It was also stated in the said letter that when such was the position relating to the actual land area retained by M/s. Dalmia with reference to which any demand by way of penal compensation aforestation charges could be claimed, the same could not have been claimed for 201.50 hectares as mentioned in the stage-I in-principle approval granted in the order dated 24.12.1997. Though the said communication dated 16.04.1999 at the instance of M/s. Dalmia was addressed to the forest department, in that context, it was very clearly stated that what was retained by it as on that date was only 134.92 hectares, out of the total extent of 331.50 hectares. It is necessary to keep the said factor in mind while considering the issue relating to the surrender raised in these proceedings.

52. Apart from the above factors, certain other factors relating to the factum of surrender are also required to be noted. At the

instance of the appellant herein a writ petition came to be filed in Writ Petition No.6304 of 1998 in the High Court of Karnataka as against the Mine Authorities and Chief Conservator of Forest as well as M/s. Dalmia. In that writ petition, the issue pertained to a boundary dispute as between the appellant and M/s. Dalmia. But the said Writ Petition came to be disposed of by learned Single Judge by order dated 26.06.2001 by stating as under:

> "***7.*** *A subsequent development requires to be noticed at this stage when the matter came up for consideration on the last date of hearing Shri B.T. Parthasarthy appearing for 3rd respondent stated that the 3rd respondent is no longer interested in working in the mine situated in the land adjoining the petitioner's land therefore at present no boundary dispute as such exists between the petitioner and the 3rd respondent. This will have some bearing on the validity of the impugned order dated 06.11.1997 as the entire order is on the assumption that a boundary dispute exists between the petitioner and the neighboring owner. Be that as it may.*"
>
> **(Emphasis added)**

53. The said stand of M/s. Dalmia which was the third respondent in that writ petition also disclosed that M/s. Dalmia categorically made it clear that it was not operating the mines covered by M.L.No. 2010. After the letter of M/s. Dalmia dated 27.03.2001 expressing its decision to surrender the lease and determine the same, the Director of Mines sent its communication dated 25.05.2001 pursuant to which M/s. Dalmia surrendered the lease deed book of M.L.No.

2010 along with its letter dated 16.06.2001. Thereafter, an application came to be filed at the instance of a company called 'M.S.P.L. Limited' through its Executive Directed Mr. Rahul Baldota on 21.07.2001 for the grant of mining lease which was held by M/s. Dalmia and shown as government land in its application. In the said application an endorsement was made on 25.08.2001 by the Director of Mines to the effect that the area applied for fell within the area surrendered by M/s. Dalmia, that a prior application was also made for mining lease over the same area by third parties, that under Rule 59(1) of the Mineral Concession Rules grant of mining lease can be only by way of a notification in the official gazette and therefore such grant cannot be considered based on individual applications. In this context it is also relevant to note that on 30.01.2002 M/s. Dalmia made a payment of Rs.22,332/- towards arrears payable by it in respect of M.L.No. 2010, which was acknowledged by the Deputy Director of Department of Mines and Geology in its letter dated 31.01.2002. The said letter specifically stated that as per the revised audit report the arrears were determined in a sum of Rs.22332/- and the same was paid by M/s. Dalmia through DD No.88545 dated 30.01.2002 and thereby no due certificate was being issued. One other relevant document of the

office of the Director of Mines and Geology is the letter dated 09.01.2002 addressed to its own Deputy Director wherein the Director of Mines while calling upon the Deputy Director to demarcate the area of mining lease No.2151 of the appellant mentioned therein that the said survey is required to be made for the purpose of renewal of M.L.No. 2151 inasmuch as the boundary dispute as between the appellant and M/s. Dalmia which was pending in the Civil Court in O.S. No.53 of 1993 was dismissed for non-prosecution on 26.09.2001 and the further fact that M/s. Dalmia surrendered their lease as on that date and therefore the dispute as between appellant and M/s. Dalmia did not survive.

54. Keeping the above material facts relating to the alleged surrender of mining lease in M.L.No. 2010 by M/s. Dalmia, the various submissions relating to the said surrender by the respective counsel requires to be dealt with.

55. While considering the various questions on surrender, the first question that arise for consideration relates to the surrender of 196.58 hectares of forest land which was made by M/s. Dalmia on 16.04.1999 out of the total extent of 331.50 hectares and that what remained with it was only 131.44 hectares. To show that M/s. Dalmia earlier surrendered 196.58 hectares, its own letter dated

16.04.1999 was placed before us. When we perused the letter dated 16.04.1999 of M/s. Dalmia which was addressed to the Principal Chief Conservator of Forest, Bangalore, it is mentioned therein that they have already surrendered 130.1 hectares out of 331.50 hectares and the balance area in their possession was only 201.50 hectares. Even out of the remaining 201.50 hectares, according to M/s. Dalmia, 110 hectare was broken up for mining, 5.75 hectare was used for roads, dams, stores, office etc., 19.17 hectares was broken up but unusable virgin area used for roads and that it was non ore-bearing area and the remaining virgin area which was not yet broken and which was being surrendered was 66.58 hectares. It is also further stated therein that the management decided to surrender even the virgin area of 66.58 hectares and ultimately wanted to retain only 134.92 hectares.

56. In fact this letter, dated 16.04.1999 apparently appeared to have been sent in response to the in-principle stage-I approval granted by the Government of India in its letter dated 24.12.1997 wherein certain conditions were imposed. While responding to the said order, M/s. Dalmia in its letter dated 16.04.1999 mentioned that as far as conditions (i) and (ii) of the Government of India dated 24.12.1997, no action need be taken since it decided to surrender

nearly 196.58 hectares and what was to be retained was only 134.92 hectares. As regards condition No.(iii), namely, the cost of penal compensatory aforestation charges was concerned, while referring to the demand, twice the area of 201.50 hectares i.e. 403 hectares @ Rs.40,700/- per hectare, M/s. Dalmia pointed out that there cannot be a demand by Government of India to that extent and at best the demand can only be raised in respect of the broken up area of 134.92 hectares. It was further contended that since M/s. Dalmia was carrying mining operations even in that 134.92 hectares with the permission of the State Government Authorities from time to time, no penal compensatory aforestation charges can be claimed over that area.

57. When we consider the said letter of M/s. Dalmia what transpires is that a conscious decision was taken by M/s. Dalmia to surrender 196.58 hectares and its further decision to retain only 134.92 hectares in the year 1999 after the earlier surrender of 130 hectares prior to 1999. The said decision of M/s. Dalmia, which was consciously taken as early as on 16.04.1999 disclose that it possessed as on that date only 134.92 hectares out of 331.50 hectares, which it was holding earlier under M.L. No.2010 of 2010. When the said factual position cannot be controverted, having

regard to the document which was addressed by M/s. Dalmia to the Principal Chief Conservator of Forest, Bangalore with a copy marked to the Inspector General of Forest, Ministry of Environment and Forest Government of India and other State Level Officers of the Forest Department, M/s. Dalmia cannot later on turn around and state that it continued to retain with it the whole extent of 331.50 hectares covered by M.L. No.2010.

58. Keeping the said aspect in mind relating to the action of surrender effected by M/s. Dalmia, when we proceed to examine the further development that had taken place after 16.04.1999, what comes next is the letter dated 27.03.2001 which was again a communication written by M/s. Dalmia to the Director of Mines and Geology of its decision to determine the lease in its favour and to surrender the remaining area under the terms of the mining lease deed. It will be necessary to make a detailed reference to the contents of the said communication dated 27.03.2001.

59. Before referring to the contents of the said letter, it will have to be kept in mind that pursuant to the general directions issued by this Court in **Godavarman-I**, all mining operations through out the country were directed to be stopped for violation of Section 2 of the Forest Act, 1980. By virtue of the general directions issued by this

Court, the mining operations in respect of M.L.No. 2010 also came to a grinding halt from the last week of January 1997. Thereafter, by virtue of the order passed in **Godavarman-II**, *ex post facto* approval under Section 2 of the Forest Act was considered and by order dated 24.12.1997 the in-principle stage-I clearance was granted by imposing three conditions for M/s. Dalmia to comply. In the said letter dated 24.12.1997 also, it was specifically mentioned that such approval for renewal of mining lease was granted for an extent of only 201.50 hectares of forest land and thereby affirming the earlier surrender of 130.11 hectares of land long prior to 16.4.1999. Condition No.(i) stated that immediate action should be taken for transfer and mutation of non-forest land equivalent in extent to the forest area to be broken up afresh and condition No.(ii) mentioned that user agency will transfer the costs of compensatory aforestation over non-forest land in favour of State Forest Department. Condition No.(iii) further directed that user agency should transfer the cost of penal compensatory aforestation raised as on that date to incorporate existing structure over double the degraded forest land in favour of the state forest department.

60. We have earlier noticed that as a sequel to the said letter dated 24.12.1997, when M/s. Dalmia was faced with the requirement of

compliance of those three onerous conditions, M/s. Dalmia in its letter dated 16.4.1999, took the stand that it has decided to retain only 134.92 hectares and that since even in respect of 134.92 hectares, mining operations were carried on with the permission of the State Government authorities, even condition No.(iii) need not be complied with.

61. In that background, when we now refer to the present letter of M/s. Dalmia dated 27.3.2001 addressed to the Director of Mines and Geology, we find, that, in the said letter M/s. Dalmia expressed its proposed decision to determine the lease and surrender the same. It also mentioned that it was giving twelve months' notice as required under paragraph 4 of Part VIII of the mining lease deed executed between M/s. Dalmia and Government of Karnataka through the Director of Mines and Geology, that the Director of Mines and Geology should determine the lease on expiration of twelve months period i.e. from 01.04.2001 or earlier if the Director of Mines and Geology permit to do so. In the last para of the said letter, it was reiterated on behalf of M/s. Dalmia that out of 331.50 hectares it had already surrendered an area of 196.58 hectares to the Forest Department through its letter dated 16.4.1999 which should also be kept in mind by the Director of Mines and Geology.

62. A cumulative consideration of the letter dated 16.4.1999 along with the *ex post facto* approval order dated 24.12.1997 and the letter dated 27.3.2001 of M/s. Dalmia, it transpires that as on 27.3.2001 M/s. Dalmia was in possession of only 134.92 hectares of the total area of 331.50 hectares covered by mining lease No.2010. As noted by us in the letter dated 27.3.2001, M/s. Dalmia wanted the Director of Mines and Geology to determine the lease even in respect of 134.92 hectares which was in its physical possession, either on expiry of the twelve months' period or any earlier date which the concerned authority may permit. To be more precise, M/s.Dalmia surrendered 130 hectares of land prior to 16.04.1999. Along with its letter dated 16.04.1999 surrender of 196.58 hectares was effected. The remaining 134.92 hectares was surrendered through its letter dated 27.03.2001.

63. In response to the said letter dated 27.3.2001, the office of the Director of Mines and Geology in their letter dated 25.5.2001 addressed to the Senior Geologist of the State Government, Department of Mines and Geology instructed him by stating that M/s. Dalmia had stopped mining operations in the area covered by M.L. No.2010 since 1997, that they wanted to surrender the lease with the Department of Mines and Geology and, therefore, intimate

as to whether any arrears were due from M/s. Dalmia. A copy of the said letter dated 25.5.2001 was marked to M/s. Dalmia. While marking the said communication, it was stated that it was being forwarded for information and with an instruction to surrender the lease deed book in respect of M.L. No.2010 along with the mining plan approved by Indian Bureau of Mines immediately for taking further action.

64. In response to the copy of the letter dated 25.5.2001 of the Director of Mines and Geology, M/s. Dalmia along with its letter dated 16.6.2001 by referring to the instructions mentioned in the letter dated 25.5.2001 stated that it was surrendering the lease deed book in respect of M.L. No.2010 and that the approved mining plan was not available with it. At the bottom of the said letter, it was stated that mining lease deed book was being enclosed along with the said communication.

65. That apart, in the Writ Petition which was pending before the High Court of Karnataka in WP 6304 of 1998 as between the first respondent and the Director of Mines, as well as, Chief Conservator of Forest where M/s. Dalmia was also a party respondent, namely, third respondent, on its behalf its counsel represented before the High Court that M/s. Dalmia was no longer interested in the working

of the mines situated in the land adjoining the writ appellant, namely, the first respondent therein and, therefore, as on that date, no boundary dispute was existing as between them. The said stand of M/s. Dalmia was the main ground which weighed with the learned Single Judge for setting aside the order dated 16.11.1997 which was impugned before it in the said Writ Petition at the instance of the first respondent. The said stand of M/s. Dalmia was clearly reflected in the order of the Learned Single Judge dated 26.6.2001.

66. Apart from the above facts, after the forwarding of the letters dated 16.4.1999, 27.3.2001 and 16.6.2001 by M/s. Dalmia whereby the surrender of the lands in its entirety, as well as, the mining lease itself, third parties were aspiring to get the mining lease in respect of the surrendered lands held by M/s. Dalmia. One such application was taken out by one M/s. M.S.P.L. Ltd. through its Executive Director, Mr. Rahul Baldota. The said application was made on 21.7.2001 for grant of mining lease in its favour. The said application was considered by the Director of Mines and an endorsement was made on the said application by the Director of Mines on 25.8.2001 which has been placed before this Court. On a perusal of the said document, we find the following endorsements made by the Director of Mines viz:

> "the area in respect of which mining lease is sought for by the applicant in the present application had been already granted by ML 2010 to M/s. Dalmia Cements (Bharat) Ltd. The area applied falls within the surrendered area by them (M/s. Dalmia Cements). Two applications 84 AML 2001 and 92 AML 2001 seeking mining lease have been received in respect of this area. Rule 59(1) of MCR Rules is attracted. At present consideration of the application is not possible as the area is not available.
>
> Sd/- 25.8.2001."

67. The Director of Mines while referring to the surrender of M.L. No.2010 by M/s. Dalmia noted that the said area falls within the surrendered area, that two applications 84AML 2001 and 92AML 2001 seeking mining lease were received in respect of that area but since Rule 59(1) of MCR Rules was attracted, consideration of application for grant of lease was not possible and that the area was not available for such a grant.

68. A cumulative consideration of all the above sequence of events disclose that right from 1999 in fact even prior to that date, M/s. Dalmia surrendered major part of the land covered by M.L. No.2010 and that by its letter dated 27.3.2001, it expressed its decision to determine the lease of the remaining area of 134.92 hectares and wanted the Director of Mines to accept such surrender either after the expiry of twelve months' period or even earlier. By 25.5.2001, the Director of Mines in response to M/s. Dalmia's desire to

determine the lease, directed it to surrender the lease book of M.L. No.2010 as well as the mining plan, and that M/s. Dalmia surrendered the lease book while stating that mining plan was not available with it at that point of time. Closely followed by that, when third parties applied for grant of lease, the Director of Mines stated in no uncertain terms that those lands were surrendered by M/s. Dalmia but lease cannot be granted based on applications and that Rule 59 (1) of MCR Rules will have to be followed for grant of such lease. In fact, subsequent to the above development on 26.9.2001, the suit filed by M/s. Dalmia against first respondent relating to the boundary dispute was also dismissed for non-prosecution. Yet another factor to be borne in mind is that on 30.1.2002, M/s. Dalmia paid a sum of Rs.22,332/- towards the arrears in respect of its mining lease and claimed that no further amount was due and payable in respect of M.L. No.2010. By a letter dated 31.1.2002, the office of the Deputy Director, Department of Mines and Geology issued a no dues certificate to M/s. Dalmia by acknowledging the receipt of Rs.22,332/- based on the revised audit report and that no other amount was due in respect of the said mining lease.

69. If we consider the above material evidence placed before us, it can be stated that as on 27.3.2001 M/s. Dalmia tacitly decided to

surrender its mining lease M.L. No.2010 and that in pursuance of the said decision, it informed the Director of Mines and Geology to determine the lease either on expiry of twelve months or on any day earlier to that and in response to the said desire expressed by M/s. Dalmia, the Director of Mines and Geology also responded by directing M/s. Dalmia to surrender the lease book as well as the mining plan and then subsequently also collected whatever arrears which were due and payable by M/s. Dalmia as on 31.01.2002. It must, therefore, be held that in effect the leasehold rights of M/s. Dalmia had come to an end by 31.1.2002.

70. Keeping the said factual scenario in mind, when we consider the contentions made on behalf of the respective parties according to the appellants, M/s. Dalmia had surrendered the entirety of the lands held by it under M.L.No. 2010 which surrender had come into effect pursuant to its letter dated 27.03.2001 accepted and acknowledged by the Department of Mines and Geology in their letter dated 31.01.2002. We have also noted the various factual aspects of the development that had taken place in regard to the said surrender of M/s. Dalmia and noted that a conscious decision was taken by M/s. Dalmia to surrender its mining lease in M.L.No. 2010 and factual surrender was also effected in writing to the

Director of Mines and Geology and that the Office of Director of Mines and Geology also acknowledged such surrender. However, not to accept the plea of surrender as projected, on behalf of the appellants Mr. K.K.Venugopal and Mr.Krishnan Venugopal relied upon various statutory prescriptions and contended that in reality if the case of surrender pleaded by the appellants is to be accepted, the compliance of such statutory requirements have to be fulfilled.

71. In furtherance of such contention in the first place Mr. Krishnan Venugopal, learned senior counsel contended that as prescribed under Rule 29 of M.C.R. Rules completion of 12 months period from the date of the intimation of the surrender should have been completed which is mandatory for the surrender to come into effect. In other words, the contention was that in law for the surrender to take place the mandatory requirement of 12 months period was necessarily to be fulfilled. It was also contended that under Rule 29, which is negatively coached and it is mandatory for the surrender to come into effect 12 months period should lapse. It was also contended that under the said Rule surrender has to be to the State Government or such other officer or specified authority. It was further contended that if a third party come forward with a case of surrender, a duty is cast on the third party to satisfy that letter of

surrender was sent to such authority and the burden is heavily upon such third party to establish the said fact. In order to give a thrust to the above submissions, namely, the satisfaction of the compliance of the mandatory prescription contained in Rule 29 reliance was also placed upon Section 11(A) as well as the schedule and contended that the philosophy underlying the MMDR Act was that every single requirement of Rule 29 should be satisfied in order to accept the theory of surrender pleaded on behalf of the appellants. It was also contended that minerals other than minor minerals are controlled by the Central Government, power is vested with the Central Government to make rules and the State Government are bound by the rules of the Center and case of surrender cannot come into effect unless the statutory prescriptions contained in the Rules are strictly adhered to.

72. In support of the above submissions reliance was also placed upon the terms of the lease as specified in Form 'K' in particular paragraph 4 of Part VIII of Form 'K' to contend that notice of termination should be for full 12 calendar months and that too on ratification of the required formalities. It was contended that there was no power with the delegate of State Government to accept or determine the lease instantaneously.

73. The sum and substance of the contention on this aspect by the learned counsel for the first respondent was that major mineral being under the exclusive control of the Government of India, there should be strict compliance of the statutory requirements both in respect of grant of lease as well as the termination of it either by surrender or by way of termination at the instance of the State and that such requirement is contained in Rule 29 which is negatively couched and, therefore, when such prescription for the purpose of surrender to come into effect has been specifically spelt out in the statutory rule read along with para 4 of Part VIII of the lease document, such surrender propounded on behalf of the appellant can be accepted only if it was satisfactorily demonstrated that those statutory prescriptions were strictly applied and followed.

74. As against the above submissions, on behalf of the appellant Mr. Kapil Sibal, learned senior counsel contended that there was no lacunae in accepting the surrender offered by M/s. Dalmia, that such surrender had really taken place by virtue of the conduct of the parties, namely, M/s. Dalmia as well as the Department of Mines and Geology of the State Government and, therefore, it was too late in the day for the first respondent to contend that the surrender made by M/s. Dalmia had not taken place.

75. Having considered the respective submissions on this question, there can be no two opinions that when the grant, operation and termination of mining lease is governed by the MMDR Act and the Mineral Concession Rules, anyone of those factors viz., either grant of lease, operation of the mines based on such grant and the termination of it either by way of surrender at the instance of the lessee or by way of termination at the instance of the State should be carried out strictly in accordance with the prescribed stipulations of the provisions of the above Act and the Rules.

76. Keeping the said legal principles in mind, when we refer to Rule 29, the caption of the said Rule reads as "restriction on determination of lease". The relevant part of the said Rule can be extracted while analyzing its implications which reads as under :

> **"29. Restrictions on determination of lease.-**(1) The lessee shall not determine the lease except after notice in writing of not less than twelve calendar months to the State Government or to such officer, or authority as the State Government may specify in this behalf."

Sub-Rule (1) states that the lessee shall not determine the lease after notice in writing of not less than 12 calendar months to the State Government or to such officer or authority as the State Government may specify in this behalf. While referring to sub-Rule (1), it will be necessary to refer to Form 'K' which is the model form

of mining lease deed. As per M.L.No. 2010, which has been drawn as per Form 'K', it is not in dispute that the said lease deed was as between the State Government which expression should be deemed to include the successors and assigns who would be the first party as the lessor. Paragraph 4 of Part VIII, which is the provision for determination of the lease by way of surrender as prescribed under Rule 29, stipulates that the lessee may at any time determine the lease by giving not less than 12 calendar months' notice in writing to the State Government to such office or to such officer or authority as the State Government may specify in that behalf and the rest of the stipulation contained therein refers to the payment of rents, water rates, royalties, compensation for damages etc. Therefore, reading Rule 29(1) what is provided is that not less than 12 calendar months notice should be issued by the lessee for determining the lease and such notice should be issued to the State Government or to such officer or authority as the State Government may specify in that behalf.

77. In fact, Xerox copy of the mining lease M.L.No. 2010 referring to the date of grant as 07.03.1986 providing for 20 years from 25.11.1983 duly registered as document No.28 of 1986-87 has been placed before us. On a reference to the said document, we find that

while on behalf of M/s. Dalmia, one P.M. Balasubramaniam has affixed his signatures, on behalf of the Governor of Karnataka, the Director of Mines and Geology has put his signature along with one K.R.Nirmala, Superintendant of DMG, Bangalore. One other relevant fact to be noted from the said document is para 5 falling under Part VIII which reads as under:

> *"**5**. On such date as the State Government may elect within 12 calendar months after the determination of this lease or of any renewal thereof, the amount of the refund of security deposit paid in respect of this lease and then remaining in deposit with the State Government and not required to be applied to any of the purposes mentioned in this lease shall be refunded to the lessee/lessees. No interest shall run on the security deposit*.
>
> **(underlining is ours)**

78. When we examine the contention made on behalf of the first respondent about the statutory requirement to be satisfied under Rule 29 read along with para 4 and 5 of Part VIII of the lease deed, it is clear that on behalf of the lessor, namely, the State Government, the signatory to the lease deed was the Director of Mines and Geology. Therefore, there can be no controversy as to who can validly represent the State Government with reference to the grant of lease, operation of it as well as its determination who is none other than the Director of Mines and Geology. When the Director of Mines and Geology was authorized to sign the lease deed on behalf

of the Governor of the State of Karnataka, it must be taken to mean that he was the authority who was validly authorized by the State Government as stipulated in Rule 29(1) of the Rules for the purpose of the lessee to inform about its decision to determine the lease while giving 12 months' notice. It must be stated that the very fact that the Director of Mines and Geology was authorized to sign the lease deed on behalf of the Governor of State of Karnataka, it was quite explicit that he was the only authority who was competent to authenticate the grant of the lease as well as for its determination. Unless there was any other Authority prescribed to carryout the said task as a statutory requirement.

79. Once we steer clear of the said position as to who is the competent authority for the purpose of operating Rule 29(1), any amount of reliance placed upon the Notification No.CI3MMM95, Bangalore dated 27.05.1995 issued by the Commerce and Industries Department of the State of Karnataka will be of no avail. The said notification was relied upon to contend that while specific direction was issued to the effect that the powers exercisable by the State Government in relation to matters with reference to various provisions as conferred by sub-section (2) of Section 26 of the MMDR Act vested with the Director of Mines and Geology,

Government of Karnataka, there was no reference to the powers exercisable by the State under Rule 29. When the State of Karnataka had authorized the Director of Mines and Geology to sign the very mining lease deed itself on behalf of the Governor of State as disclosed in the Xerox copy of the mining lease M.L.No. 2010, it is futile on the part of the first respondent to contend that for the purpose of determination of that very lease, a different Authority should be preferred. In fact, M/s. Dalmia itself having understood the prescribed Authority, sent its letter of determination of the lease dated 27.03.2001 only to the Director of Mines and Geology. The said Authority also responded to the letter of determination in its letter dated 25.05.2001 addressed to its subordinate officer marking a copy to M/s.Dalmia. Therefore, the said contention raised on behalf of the first respondent that the surrender of the lease not having been forwarded to the authorized officer of the State Government by M/s. Dalmia, the so-called letter of surrender dated 16.04.1999 and 27.03.2001 cannot be validly construed as the act of M/s. Dalmia to determine the lease is to be stated only to be rejected. We are afraid that it is too late in the day for the first respondent to come forward with such a contention when M/s. Dalmia having entered into lease deed with the State of Karnataka

duly represented by the Director of Mines and Geology exercised its right to determine the lease by addressing its communication on 27.03.2001 to the very same Authority. It must be stated that such a decision taken and communicated by M/s. Dalmia to the Director of Mines and Geology was valid in law and was in consonance with the prescription contained in sub-Rule (1) of Rule 29.

80. What remains to be considered is the question whether one should wait for the expiry of the 12 months period to lapse from 27.3.2001 for the surrender to come into effect by relying upon para 4 of Part VIII of the lease deed. In the first place, even according to M/s. Dalmia in their letter dated 27.3.2001 M/s. Dalmia themselves while giving 12 months notice as required under para 4 of Part VIII of the mining lease deed also stated that it may be determined on any earlier date i.e. prior to 1.4.2001 if the Director of Mines and Geology so permit. When such a categorical stand was made on behalf of M/s. Dalmia, acting upon it, the office of Director of Mines and Geology in their letter dated 25.5.2001 addressed to the Senior Geologist while marking its copy to M/s. Dalmia directed it to surrender the lease deed book along with the mining plan immediately to enable its office to take further action. In fact, in the body of the letter addressed to Senior Geologist, the Director of

Mines and Geology specifically mentioned that M/s. Dalmia wanted to surrender the lease M.L. No.2010 earlier than 12 months period. Apart from such specific instructions issued, M/s. Dalmia themselves in their reply dated 16.6.2001 to the Director of Mines and Geology surrendered the lease deed book of M.L. No.2010 and as regards the mining plan it stated that the same was not available with it. Thereafter, as was noticed earlier, on 30.1.2002, M/s. Dalmia paid a sum of Rs.22,332/- towards arrears in respect of the mining lease which was also acknowledged by the Director of Mines and Geology which was duly communicated to M/s. Dalmia by stating that by issuing such no due certificate, no further amount was due and payable in respect of said mining lease.

81. When we consider the above correspondence exchanged between M/s. Dalmia and the office of the Director of Mines and Geology, there is no room for doubt for anyone to still contend that the surrender had not come into effect. On the other hand, we find that there was due compliance of Rule 29(1) when M/s. Dalmia expressed its desire to determine the lease in its letter dated 27.3.2001 addressed to Director of Mines and Geology. Then by specifically stating in the said communication that it may even be permitted to determine the lease prior to 12 months period and that

based on such specific plea made on behalf of M/s. Dalmia, the Director of Mines and Geology also decided to determine the lease without waiting for the expiry of 12 months period by calling upon M/s. Dalmia to surrender the lease book which was also duly surrendered by M/s. Dalmia on 16.06.2001 and thereafter by issuing a no due certificate on 31.2.2002, the said sequence of events had put an end to the operation of the lease in M.L.No. 2010 by duly accepting the surrender made on behalf of M/s. Dalmia. The contention that there was no scope for such surrender to come into effect before the expiry of twelve months is concerned, it will also be relevant to make a reference to para 5 of the lease deed M.L.No. 2010 in Part VIII which has been extracted above. The said paragraph 5 empowers the State Government to elect within 12 calendar months after the determination of lease for the purpose of refunding the security deposit made by the lessee. We do not find any specific bar in para 4 of Part VIII that while on the one hand the lessee has to give not less than twelve calendar months notice, on receipt of such notice the state government should wait for the expiry of the twelve months period.

82. The contention that only on expiry of the twelve months period, the surrender will come into effect does not stand to reason also. In

fact, we do not see any sound basis in making such a contention on behalf of the first respondent. On the other hand, para 5 of the lease deed itself gives ample right to the lessor, namely the Director of Mines and Geology to refund the security deposit, if any, to make the determination of lease within the 12 months period of notice. The said clause provides clear indication for such earlier acceptance of the determination of the lease. We have noted extensively that long prior to 16.04.1999 as well as from 16.4.1999 onwards till M/s. Dalmia by its communication dated 27.3.2001 positively expressed its decision to determine the lease, M/s. Dalmia themselves were only referring to the mining operations to the extent of 130.4 hectares which remained with them as on 27.03.2001. Even in respect of the said extent of lands by virtue of the general directions issued by this Court in **Godavarman I** no mining operation was being carried on from January 1997. Subsequently, based on **Godavarman II** order of this Court, when the Ministry of Environment and Forest was directed to consider issuance of *ex post facto* approval, one such order was issued in favour of M/s. Dalmia on 24.12.1997 by way of in principle stage-I approval by imposing three conditions. Even as on 16.4.1999, M/s. Dalmia in writing categorically stated and took the stand that it need not

comply with the conditions imposed in the order dated 24.12.1997. In effect M/s. Dalmia was not operating its right of carrying out any mining activity in respect of the entirety of 334.40 hectares after the first renewal effected in the year 1983. Ultimately, in its letter dated 27.03.2001, it made explicitly clear that it was not operating the mines and, therefore, it wanted to surrender either after expiry of twelve months period from the date of issuance of such notice or any day earlier that may be acceptable to the State Government.

83. In the light of such a clear stand disclosed by M/s. Dalmia, we fail to understand as to for what reason the State Government should wait for the expiry of the twelve months period for the surrender to come into effect. On the other hand, the decision made by the Director of Mines and Geology in its communication dated 25.5.2001 addressed to the Senior Geologist with a copy marked to M/s. Dalmia to determine the lease earlier and for that purpose directed M/s. Dalmia to surrender mining lease book, namely, M.L. No.2010 along with the mining plan was a pointer to the effect that the surrender was decided to be accepted on behalf of the State Government instantaneously which was also not prohibited either under the Rules or under the terms of the lease deed or under any other statutory provision.

84. In this context, the reliance placed upon some of the decisions of this Court by Mr. Kapil Sibal, learned senior counsel appearing for the appellant needs to be considered. The learned senior counsel relied upon the earliest judgment of this Court reported as **Basheshar Nath (supra)** for the proposition that the principle of waiver will have different shades when it comes to the question of such waiver being opted depending upon the nature of right as to whether it would be for the benefit of individual or for the general public. This Court has held as under in paragraph 66:

> *"66.....I may refer in this connection to the provisions in Part XIII which relate to trade, commerce and intercourse within the territory of India. These provisions also impose certain restrictions on the legislative powers of the Union and of the States with regard to trade and commerce. As these provisions are for the benefit of the general public and not for any particular individual, they can not be waived, even though they do not find place in Part III of the Constitution. Therefore, the crucial question is not whether the rights or restrictions occur in one part or other of the Constitution. The crucial question is the nature of the right given: is it for the benefit of individuals or is it for the general public?"*

85. The said well settled principle of law set down by this Court will have universal application. When such principle is applied to the case on hand, as rightly pointed out by Mr.Sibal, learned senior counsel when the State of Karnataka chose to accept the surrender

made by M/s. Dalmia in its letter dated 27.03.2001, immediately thereafter by directing M/s. Dalmia to surrender the lease book of M.L.2010 along with mining plan such action of the State Government for the purpose of ensuring the effective surrender offered by M/s.Dalmia having been made in the general public interest, as the leasehold rights of the mining activities would be in the lands belonging to the State and that too Forest Lands, such action taken in accepting the surrender by waiving the 12 months period should be taken as having come into effect. We find force in the said submission of the learned senior counsel for the appellant.

86. In this context, the various orders relied upon and placed before this Court by Mrs. Anitha Shenoy, Advocate-on-Record appearing on behalf of the State Government, namely, the orders dated December 1988, 11.4.1989, Notification dated 12.3.1965 and Notification dated 19.6.1965 require to be examined. The order dated December, 1988 relates to the acceptance of full surrender of M.L. No.994 in Sankalapuram village, Hospet Taluk, Bellary district. The said document has been signed by the Director of Mines and Geology, Bangalore on behalf of Government of Karnataka stating that full surrender of mining lease No.994 was accepted with effect from 1.7.1986. The order dated 11.4.1989 is another order in

respect of mining lease No.1759. Here again the said order was signed by Director of Mines and Geology, Bangalore on behalf of the State Government for accepting the surrender. The earlier notification dated 12.3.1965 states that as provided under proviso to Rule 29, one Shri G.R. Thiruvengadam Chetty, the lessee of M.L. No.419 was permitted to surrender some part of the lease hold lands which was notified in the name of the Governor of Mysore. Similar is the Notification dated 19.6.1965 in respect of mining lease No.414 held by one Shri M.B. Jhaveri. While those notifications were of the years 1965, 1988 and 1989, we find that surrender of mining lease was duly acknowledged by the Director of Mines and Geology on behalf of the state of Karnataka. Therefore, even going by the earlier orders pertaining to acceptance of surrender issued by the State of Karnataka read along with the orders dated 25.5.2001 and 31.1.2002 issued in the case of M/s. Dalmia and for the various reasons referred to above, we hold that M/s. Dalmia surrendered its mining lease M.L. No.2010 in respect of the entire extent of 331.50 hectares in Jaisinghpur village, R.M. Block, Sandur Taluk, Bellary, State of Karnataka which surrender was duly accepted by and on behalf of State of Karnataka which had come into effect on acknowledgment of the receipt of the sum of Rs.22,332/- towards

arrears in respect of the said mining lease in the acknowledgment letter dated 31.1.2002.

87. When once such surrender had come into effect, it must be stated that there was no scope for M/s. Dalmia to resile from the said surrender and contend that it still had a right to transact with the said M.L. No.2010 for any other purpose including for effecting any transfer in favour of anyone much less in favour of the first respondent.

88. In this context, the reliance placed upon some of the decisions of this Court by Mr. Krishnan Venugopal learned senior counsel appearing for the first respondent needs to be considered. The learned senior counsel for the first respondent relied upon the decisions reported in **Sethi Auto Service Station (supra)** and **Shanti Sports Club (supra)** for the proposition that 'noting' in the department files do not have sanction of law to be an effective order unless it culminate into an executable order affecting the rights of the parties and only when it reaches the final decision making authority in the department get his approval and the final order is communicated to the person concerned. There can be no dispute with regard to the said principle stated in the above referred to two decisions. But in the case on hand, we have extensively noted the

various sequence of events relating to the factum of surrender effected by M/s. Dalmia to the extent of 130 hectares long prior to 16.04.1999 and an extent of 196.58 hectares in its letter dated 16.04.1999 itself and subsequently by its letter dated 27.03.2001, its desire to sanction the whole of the mining lease covered by M.L.No.2010. We also referred to various communications which emanated from the office of the Director of Mines and Geology confirming acceptance of surrender proposed by M/s. Dalmia which came to an end on 31.01.2002. In the light of the said voluminous correspondence between M/s. Dalmia and the Department of Mines and Geology of the State Government available on record the reference to file noting dated 28.05.2001, by the Director of Mines and Geology, was only an additional supporting material to confirm the act of surrender effected by M/s. Dalmia and its final conclusions as recorded in the proceedings of the Director of Mines and Geology. We therefore do not find any support for the first respondent by referring to the above two decisions.

89. Mr. Krishnan Venugopal, learned senior counsel further relied upon the decisions in **Lila Gupta (supra)** and **Pankaj Mehra (supra)** for the proposition that all acts in violation of the lease which do not provide for consequence of the breach would be void.

90. In the decision reported in **Lila Gupta (supra),** the said principle has been set out in paragraph 10 and while stating so, this Court has explained as to how such a principle would vary when it comes to the question of affecting the public at large. In that case, it was stated so in paragraph 10 while dealing with the claim of a woman while ascertaining her status as the wife and it was in that context, the principle was stated. This Court further in paragraph 11 explained as to how the said principle cannot have universal application.

91. As far as the decision reported in **Pankaj Mehra (supra)** is concerned, the statement of law set out in paragraph 14 itself is clear in its term and states that the word 'void' has different nuances in different connotation and one of them is to the effect that it should be construed as having no legal force or binding effect while in another circumstances, it should be construed as 'unable in law to support the purpose for which it was intended'. The relevant paragraph for our purpose reads as follows:

> *"14.....The word 'void' in its strictest sense, means that which has no force and effect, is without legal efficacy, is incapable of being enforced by law, or has no legal or binding force, but frequently the word is used and construed as having the more liberal meaning of 'voidable.*

The word 'void' is used in statutes in the sense of utterly void so as to be incapable of ratification, and also in the sense of voidable and resort must be had to the rules of construction in many cases to determine in which sense the Legislature intended to use it. An act or contract neither wrong in itself nor against public policy, which has been declared void by statute for the protection or benefit of a certain party, or class of parties, is voidable only."

(underlining is ours)

92. Therefore, if such a different connotation is followed for the expression 'void' and when we apply the said principle to the case on hand with particular reference to Rule 37(1A) we have explained in detail as to how the voidness of the leasehold right would result in by virtue of the serious violations committed by M/s. Dalmia while dealing with the mining lease in M.L.No.2010 while carrying out the first renewal in the year 1983 when the violation of Section 2 of the Forest Act, 1980 occurred and subsequently when Stage I *ex post facto* approval was granted on 24.12.1997 by imposing conditions which were flagrantly violated by M/s. Dalmia and thereby made the lease *void ab initio*.

93. In the light of the above circumstances, pertaining to the case on hand, we do not find any scope to apply the above decisions relied upon by the learned senior counsel for the first respondent.

94. It will be useful to refer to paragraphs 10 and 11 of the decision reported in **Lila Gupta (supra)** to highlight the distinctions stated above as to how those decisions can be of no application to the facts of this case.

> *"(10) .....the interdict of law is that it shall not be lawful for a certain party to do a certain thing which would mean that if that act is done it would be unlawful. But whenever a statute prohibits a certain thing being done thereby making it unlawful without providing for consequence of the breach, it is not legitimate to say that such a thing when done is void because that would tantamount to saying that every unlawful act is void. .....*
>
> *(11) Undoubtedly, where a prohibition is enacted in public interest, its violation should not be treated lightly....."*
>
> ***(Emphasis added)***

95. Our above conclusion as regards the surrender effected by M/s. Dalmia answers question Nos.(i) to (iii) framed in paragraph 48. With that we come to the next question as to whether the act of surrender in order to become complete should have been accepted by the State. It must be stated that acceptance by the State though not a statutory requirement, the provisions contained in the mining lease, in particular, Part VIII paragraphs 4 and 5 impliedly require such acceptance. While answering question Nos.(i) to (iii), we have

elaborately noted as to the manner in which M/s. Dalmia's proposal to determine the lease as initiated in its communication dated 27.3.2001 ultimately resulted in the surrender of the lease by acknowledging the sum of Rs.22,332/- towards final dues payable by it under the said lease. We have also held that the Director of Mines and Geology was the competent authority to receive a proposal for determination of lease by M/s. Dalmia. The subsequent correspondence exchanged between M/s. Dalmia and the Director of Mines and Geology also confirm that the proposal of M/s. Dalmia was considered and subsequent directions were issued for the purpose of accepting the surrender proposed and ultimately by acknowledging the payment of arrears and issuance of no due certificate the surrender was finally accepted on behalf of the State Government by the Director of Mines and Geology. Therefore, while holding that acceptance of surrender is impliedly mandated under Rule 29 read along with paragraphs 4 and 5 of Part VIII of the mining lease, there was a factual acceptance on behalf of the State of Karnataka of the mining lease M.L. No.2010.

96. Reliance was placed upon the decision reported as **Bhagwati Prasad Pawan Kumar v. Union of India - (2006) 5 SCC 311** wherein this Court held that the Courts must examine the evidence

to find out whether in the facts and circumstances of the case the conduct of the "offeree" was such as amounted to an unequivocal acceptance of the offer made. Paragraph No.19 is relevant for our purpose which reads as under:

> *"19. It is well settled that an offer may be accepted by conduct. But conduct would only amount to acceptance if it is clear that the offeree did the act with the intention (actual or apparent) of accepting the offer. The decisions which we have noticed above also proceed on this principle. Each case must rest on its own facts. The courts must examine the evidence to find out whether in the facts and circumstances of the case the conduct of the "offeree" was such as amounted to an unequivocal acceptance of the offer made. If the facts of the case disclose that there was no reservation in signifying acceptance by conduct, it must follow that the offer has been accepted by conduct. On the other hand, if the evidence disclose that the "offeree" had reservation in accepting the offer, his conduct may not amount to acceptance of the offer in terms of Section 8 of the Contract Act."*
>
> ***(underlining is ours)***

97. In the case on hand, we have considered various documents by way of correspondence exchanged between M/s.Dalmia and the said authorities prior to 1999 and after 16.04.1999, ending with 31.01.2002 to hold that there was an unequitable acceptance of the surrender offered by M/s.Dalmia. Having regard to our said conclusions, it is no longer open for anyone to contend that the surrender had not come into effect.

98. Having answered the said question, when we come to the next question as to whether pursuant to the act of surrender, delivery of possession was mandatory under Rule 27 (2) (l) of the Mineral Concession Rules, it would be necessary to make a reference to the said Rule which reads as under:

> "*(l) The delivery of possession of lands and mines on the surrender expiration or determination of the lease;"*

99. Under Rule 27, it is stated that every mining lease shall be subject to certain conditions. Sub-Rule (2) states that a mining lease may contain such other conditions as the State Government may deem necessary in regard to conditions (a) to (o). Under the said sub-Rule (2) in clause (l), it is provided that delivery of possession of lands and mines on the surrender, expiration or determination of lease. What is required under Rule (2) of Rule 27 was that a mining lease may contain many conditions including what is specified in Clause (l). The reference to Rule 27 (2)(l) was relied upon by learned counsel for the State. Except merely drawing our attention to the said sub-clause (l) of Rule 27 (2), we were not drawn to any of the clause contained in the mining lease in M.L. No.2010 to state that such a condition was specifically incorporated in the mining lease. It is not even the case of the first respondent or the

respondent State that such a condition for physical possession of the lands on surrender was specified in the mining lease.

100. In such circumstances, we do not find any need or necessity to delve deep into the said contention in order to find out whether or not such a condition should have been fulfilled by M/s. Dalmia or by the State Government for the purpose of surrender to come into effect. We, therefore, hold that insofar M.L. No.2010 was concerned, there being no specific provision as specified in Clause (l) of Rule 27 (2) there was no mandatory requirement of delivery of possession as stipulated therein.

101. When we come to question Nos.(vi), (vii), (viii), (ix) and (x) the said questions would arise if at all the surrender had not taken place and thereby assuming the lease continued for non-compliance of the conditions imposed in the in principle stage-I approval in the order dated 24.12.1997, did the mining lease stood automatically expired on 24.11.2003. Question No.(vii) again pertains to the lease becoming *void ab initio* by virtue of contravention of Rules 29 and 37 of Mining Concession Rules read with Section 19 of the MMDR Act. The next question pertains to the prior approval for any mining lease to come into operation as stipulated in Section 2 of the Forest Act of 1980. In fact, the said question was required to be considered

in the light of the contention raised on behalf of the appellants that *ex post facto* approval is not provided for under the Forest Act of 1980 and that such a course was adopted only by this Court in **Godavarman I** and **II** as a one time measure. Whereas on behalf of the first respondent, it was contended that there was a clear distinction as regards the grant of mining lease on the one hand under the provisions of MMDR Act and the Mining Concession Rules and the requirement of approval under Section 2 of the Forest Act 1980 and the one does not overlap the other. In the first instance, in support of the said stand made on behalf of the first respondent, reliance was placed upon amended Forest Conservation Rules, in particular Rules 6, 7 and 8 and state that non-compliance of Section 2 of the Forest Act will not *ipso facto* make the lease *void ab initio*. The consideration of the said questions would become relevant for the purpose of considering the subsequent claim of M/s. Dalmia as well as the first respondent that mining lease M.L. No.2010 stood transferred by M/s. Dalmia in favour of the first respondent pursuant to the application of transfer dated 4.2.2002 made by M/s. Dalmia and the order dated 16.3.2002 of the State Government by which such a transfer of lease of M.L. No. 2010 was granted in favour of the first respondent.

102. When we consider question Nos.(vi), (vii), (viii), (ix) and (x) as far as question No.(vi) is concerned, we have found that when during the operation of the first renewal viz., between 25.11.1983 and 24.11.2003, there was a statutory violation in as much as the mandatory requirement of approval under Section 2 of the Forest Act, 1980 was not secured on the date when the first renewal was granted viz., 07.06.1986. However, fortunately for M/s.Dalmia, **Godavarman I** and **Godavarman II** judgments of this Court came for its rescue by way of a general direction while all mining operations were directed to be stopped in **Godavarman I**, subsequently in **Godavarman II** direction was issued to the Central Government to consider *ex post facto* approval under Section 2 of the Act as a one time measure. Pursuant to the said direction, in the case of M/s.Dalmia, an order came to be passed on 24.12.1997, granting in-principle first stage approval by imposing three conditions. The said order further directed that while granting in-principle first stage approval, to enable M/s.Dalmia to carry on its mining operations, the requirement of fulfillment of three conditions were mandated to be complied within a period of five years from the date of the said order i.e. on or before 24.12.2002. Admittedly, M/s.Dalmia did not comply with those conditions. The stand of

M/s.Dalmia was that as on that date it was in possession of only 134.92 hectares and that even in respect of those areas since it was carrying on mining operations with the permission of the Forest Department of the State Government, no further compliance was required.

103. As far as the surrender of land and afforestation compensation was concerned, M/s. Dalmia took a categorical stand that it was not liable to comply with those directions. Therefore, the outcome of such a stand taken on by M/s.Dalmia was to the effect that in-principle stage I approval granted by MOEF was not carried out. Of course, Mr.Krishnan Venugopal, learned senior counsel in his submissions contended that having regard to the subsequent amendment of the Forest (Conservation) Rules in particular Rules 6, 7 and 8 and also a communication of the MOEF dated 14.9.2001, the non-compliance of the conditions will not have any impact on the validity of the lease as the amended Rules and the communication of the MOEF made it clear that the compliance of such conditions imposed can always be carried out even after the expiry of the initial period of five years and the MOEF came forward to give extension of time for compliance of whatever conditions which were imposed at the time of grant of the first renewal to enable the lessee to

continue to retain its mining lease and thereby seek for further renewal.

104. It is true that a reference to the amended Rules 6, 7 and 8 as well as the earlier communication of MOEF did to some extent support the stand of the learned senior counsel for the first respondent. However, persuasive such a contention may be as raised on behalf of the first respondent, we find it extremely difficult to accept such a contention. As rightly pointed out by Mr.Kapil Sibal, learned senior counsel when we construe Rules 29 and 37(1A) read along with Section 19 of the MMDR Act, *de hors* any liberal approach offered by the authorities of MOEF under the provisions of the Forest Act, such relaxation in the matter of compliance of conditions of prior approval would always be subject to the mining lease granted under the provisions of MMDR Act and the Mineral Concession Rules is in a live stage. In other words, unless the mining lease granted under the provisions of the MMDR Act read along with the provisions contained in the Mineral Concession Rules continue to remain valid and operative, the question of compliance of the conditions for prior approval under Section 2 of the Forest Act even with whatever relaxation granted by the authorities under the

said Act will be of no use. In this context, when we apply Section 19 of the MMDR Act. Section 19 of the MMDR Act reads as follows:

> *"**19. Prospecting licences and mining leases to be void if in contravention of Act:-** Any reconnaissance permit, prospecting licence or mining lease granted, renewed or acquired in contravention of the provisions of this Act or any rules or orders made thereunder shall be void and of no effect.*
>
> *Explanation:- Where a person has acquired more than one reconnaissance permit, prospecting licence or mining lease and the aggregate area covered by such permits, licences or leases, as the case may be, exceeds the maximum area permissible under section 6, only that reconnaissance permit, prospecting licence or mining lease the acquisition of which has resulted in such maximum area being exceeded shall be deemed to be void."*

105. Thus, Section 19 makes the position clear that any mining lease granted originally or renewed subsequently in contravention of the provisions of the MMDR Act or any Rules or any Order made thereunder to be void and of no effect. The expression used in Section 19 is mandatory and therefore if any contravention of the provisions of MMDR Act or Rules or Orders found in respect of a mining lease originally granted or subsequently renewed such mining lease should be treated to be void and inoperative for operating the said mining lease. It must also be kept in mind that carrying on any non-forest activity in a Forest Land can only be with

the prior approval of the Central Government under Section 2 of the Forest Act of 1980. Therefore, for a mining lease to remain valid, twin requirements of the approval of the Central Government under the proviso to Section 5(1) of MMDR Act and Section 2 of the Forest Act of 1980 have to be fulfilled. Therefore, a lessee cannot be heard to contend that such statutory requirements are to be thrown overboard and permitted to seek for such approvals after the expiry of the lease at its own sweet will and pleasure and the time to be fixed on its own and that the operation of the mining lease should be allowed ignoring such mandatory prescription.

106. Keeping the above said mandatory prescription in Section 19 in mind, when we analysis the case on hand, in the first place, admittedly after the first renewal, there was a serious violation of failure to get the prior approval under Section 2 of the Forest Act, 1980 i.e. when the renewal order was passed on 07.03.1986. Therefore, if we strictly apply Section 19, it must be stated that even as on 07.03.1986, for violation of Section 2 of the Forest Act, 1980 it must be stated that, in law, there was no mining lease at all in existence as it became void on the expiry of the initial period of the original lease granted in 1953. It may be contended that such violation get cured by virtue of the judgments in **Godavarman I** and

Godavarman II, though for argument sake, such a contention put forth on behalf of M/s.Dalmia and the first respondent can be taken to be available, as pointed out by us earlier, based on the said judgments of this Court when the in-principle first stage approval was granted by imposing conditions in the order dated 24.12.1997, such conditions were blatantly violated by M/s.Dalmia by taking a stand that it was not bound to comply with those conditions. The reply of M/s.Dalmia dated 16.04.1999, was sufficient to confirm the said stand of M/s.Dalmia. Therefore, as on 16.04.1999, since the lessee viz., M/s.Dalmia refused to comply with the conditions imposed in the in-principle first stage approval, it cannot lie in the mouth of either M/s.Dalmia or anyone who seek to claim any right through M/s.Dalmia by contending that any violation of Section 19 of MMDR Act or any of the Rules of Mineral (Concession) Rules or orders made therein or Section 2 of the Forest Act of 1980 should be ignored and the plea made on behalf of M/s.Dalmia as well as the first respondent should be accepted.

107. We are unable to accept such an extreme proposition canvassed on behalf of M/s.Dalmia and the first respondent, as in our considered opinion, the violation had occurred at the time of the order of first renewal viz., 07.03.1986 itself, striking at the very root

of the validity of the lease, as it must be held that it was void at that very stage itself for non-compliance of the prior approval under Section 2 of the Forest Act, 1980 and in any case, on the blatant refusal to comply with the conditions imposed in the in-principle first stage approval granted in the year 24.12.1997. Once we are able to come to the said conclusion, we hold that the mining lease which was held by M/s.Dalmia in M.L.No.2010 became void and inoperative for violation of the mandatory requirements of the conditions. In this context, it will also be relevant to refer to Rule 37(1A). The said Rule reads as under:

> *"**Rule 37(1A):** The State Government shall not give its consent to transfer of mining lease unless the transferee has accepted all the conditions and liabilities which the transferor was having in respect of such mining lease."*

A reading of the said sub-Rule which was introduced by G.S.R. 724(E), dated 27.09.1994, a substantive condition is imposed while considering an application for consent for transfer of mining lease.

108. In the first blush it may appear that what all required is the acceptance by the transferee to comply with all the conditions and liabilities which the transferor was obliged to fulfill in respect of the mining lease. But on a deeper scrutiny of the said Rule, it will have

to be stated that if there was a total violation of mandatory statutory conditions under the MMDR Act and by virtue of the requirements in this case of the fulfillment of Section 2 of the Forest Act, 1980 as well as the proviso to Section 5 of the MMDR Act, the question of considering the very application for consent to transfer should be held to be not available at all. As we have held in the earlier part of this order that M/s.Dalmia committed serious violation in regard to the compliance of Section 2 of the Forest Act, 1980 at the time of first renewal in the year 1983/86 itself and in any event, by refusing to comply with the conditions imposed in the order dated 24.12.1997, the said violation would strike at the very root of the claim for transfer of the dead lease as stipulated in Section 19 of the MMDR Act. Therefore, on this ground as well, it must be held that there was no scope at all for the State Government to consider the application made by M/s.Dalmia for transferring of its mining lease in favour of the first respondent. When we go little further and examine Rule 29, as we have held that M/s.Dalmia had surrendered its mining lease M.L.No.2010 once and for all, based on its proposal made on 27.03.2001 and accepted by the Director of Mines and Geology on behalf of the State Government which became conclusive as on 31.01.2002, there was no live lease for the purpose

of considering any application for transfer under Rule 37 of the Mineral (Concession) Rules. When that be the legal consequence in respect of the lease, which was void and inoperative, it must be held that there was no scope for holding that there was a valid transfer made by M/s.Dalmia in favour of the first respondent on 16.03.2002.

109. We find that the reliance placed upon by Dr. Singhvi, learned senior counsel on the decisions of this Court needs to be mentioned, which fully supports his submissions. He placed reliance upon the decision reported in **A. Chowgule (supra)** for the proposition that the requirement of approval under Section 2 of the Forest Act has got greater significance and that non-compliance of the said provision would result in serious consequences. In the said decision, this Court while referring to Rules 4, 6, 2A and 5 read along with Section 2 of the Forest Act held that prior approval cannot be granted unless the procedure prescribed in the said Rules were duly complied with and that such approval under Section 2 is *sine qua non* for the State Government and the other authorities before taking any steps in respect of the Forest land. The relevant paragraph No.18 of the said decision reads as under:

> *"18..... A bare perusal of the aforesaid provisions would show that prior approval is required for the diversion of any forest land and its use for some other*

purpose. This is further fortified by a look at Rule 4 which provides that every State Government or other authority seeking prior approval under Section 2 of the Act shall submit a proposal to the Central Government in the prescribed form and Rule 6 stipulates that the proposals would be examined by a committee appointed under Rule 2-A within the parameters and guidelines postulated in Rule 5.....”

(Underlining is ours)

110. Similar view has been expressed in the decision reported in **Nature Lovers Movement (supra).** Paragraph Nos. 47 and 48 are relevant for our purpose which read as under:

“47. The ratio of the above noted judgments is that the 1980 Act is applicable to all forests irrespective of the ownership or classification thereof and after 25.10.1980, i.e., date of enforcement of the 1980 Act, no State Government or other authority can pass an order or give a direction for de-reservation of reserved forest or any portion thereof or permit use of any forest land or any portion thereof for any non-forest purpose or grant any lease, etc. in respect of forest land to any private person or any authority, corporation, agency or organization which is not owned, managed or controlled by the Government.

48. Another principle which emerges from these judgments is that even if any forest land or any portion thereof has been used for non-forest purpose, like undertaking of mining activity for a particular length of time, prior to the enforcement of the 1980 Act, the tenure of such activity cannot be extended by way of renewal of lease or otherwise after 25.10.1980 without obtaining prior approval of the Central Government.”

111. It is relevant to note that to the same effect is the decision reported in **Rural Litigation and Entitlement Kendra vs. State of U.P. - 1989 Supl. (1) SCC 504.**

112. Mr. Sibal, learned senior counsel then relied upon the decision reported in **Ambica Quarry Works (supra)** to repel the submission made on behalf of the first respondent that the non-grant of approval under Section 2 of the Forest Act, 1980 will be of no consequence as the continued existence of the lease which was granted prior to coming into force of the Forest Act, 1980 and it came to be renewed in the year 1983 after the Forest Act came into force. In the said decision in paragraph 15 is relevant which reads as under:

> *"15. The rules dealt with a situation prior to the coming into operation of 1980 Act. '1980 Act' was an Act in recognition of the awareness that deforestation and ecological imbalances as a result of deforestation have become social menaces and further deforestation and ecological imbalances should be prevented. That was the primary purpose writ large in the Act of 1980. Therefore the concept that power coupled with the duty enjoined upon the respondents to renew the lease stands eroded by the mandate of the legislation as manifest in 1980 Act in the facts and circumstances of these cases. The primary duty was to the community and that duty took precedence, in our opinion, in these cases. The obligation to the society must predominate over the obligation to the individuals."*
>
> ***(underlining is ours)***

Consequently, the question Nos.vi, vii, viii, ix and x are answered to the said effect.

113. With that when we come to the next question No.(xi), namely, the requirement of Central Government under Section 5 of MMDR Act for grant of approval which was again stipulated in Section 2 of the Forest Act and whether compliance of the said provision are mandatory for a mining lease to remain valid. Similarly, question No.(xii) whether Section 10 (1) and the second proviso to Section 11 of the MMDR Act as well as Rules 37 and 59 of Mineral Concession Rules mandate to the effect that any transfer applied for under Rule 37 (1)(a) cannot be automatically granted. That question would arise only if the lease hold right of M/s. Dalmia under M.L. No.2010 was available with it for the purpose of effecting any transfer. Inasmuch as we have held that the said lease was duly surrendered by M/s. Dalmia and accepted by the State Government, we do not find any necessity to examine those questions and we leave it open for consideration as and when any need arises for deciding those questions.

114. As far as the question Nos.(xiii) and (xiv) are concerned, as to whether the order of transfer dated 16.3.2002 was *bona fide* taking

into account the sequence of events and whether the transfer of lease dated 16.3.2002 can be held to be valid, we wish to recapitulate the various sequence of events as from 16.4.1999 till 30.1.2002 pertaining to the surrender of lease made by M/s. Dalmia. Since we have extensively dealt with the said issue in the earlier part of our order, we merely state that our conclusion as regards the coming into force of the surrender made on behalf of the M/s. Dalmia and its acceptance by the State Government from 31.01.2002 would be sufficient to hold that there was total lack of *bona fides* on the part of the State government in taking a sudden U-turn for passing the order of transfer dated 16.3.2002 in favour of the first respondent. In this context, as rightly contended on behalf of the appellant, the conduct of the Director of Mines and Geology, one Dr. Reddy who dealt with the applications made by one M.S.P.L. Ltd. through its Executive Director Mr. Rahul Baldota on 21.7.2001 and another applicant with reference to which Dr. Reddy made an endorsement in the office note dated 25.8.2001 which stated that the land covered by M.L. No.2010 was surrendered by M/s. Dalmia, that certain other applications were also received for grant of lease in respect of those lands apart from M.S.P.L. Ltd. and that there was no scope to consider any of those applications since in respect of

surrendered land Rule 59(1) of Mineral Concession Rules would automatically come into play and any future grant of lease can only be done as specified under the said Rule. When such a clear stand was spelt out by the said officer, namely, Dr. Reddy while making the endorsement on 25.8.2001, we fail to see any justifiable reason as to how the very same officer in his capacity as Director of Mines and Geology could be a signatory to its recommendation dated 6.2.2002 for effecting the transfer and based on his recommendation the State Government allowed the application for transfer of M.L. No. 2010.

115. Reliance was placed upon the decision reported in **Bangalore Development Authority (supra)**, certain facts noted in that judgment in paragraph 15 and based on such facts the order passed by the learned Single Judge and reversal of the order of the learned Single Judge by the Division Bench which was found to be correct have been stated in paragraphs 15 and 18 which are relevant for our purpose and the said paragraph reads as under:

> *"15. We are of the view that the above principles when applied to the case on hand, it can be safely concluded that the order of the learned Single Judge in the light of the peculiar facts noted therein cannot be faulted. We also wonder as to why the Hon'ble Minister concerned should have taken upon himself the extraordinary effort of making an inspection for which no special reasons*

were adduced in the report. That apart none of the reasons which weighed in the report of the Hon'ble Minister reflected the true facts. The conclusion of the Hon'ble Minister that the possession continued to remain with the owner was contrary to what was found on records. The Mahazar dated 09.12.1983 as noted by learned Single Judge from the original file reveal that the conclusion of the Hon'ble Minister was ex facie illegal and untrue. The said conclusion obviously appeared to have been made with some ulterior motive and purpose and with a view to show some undue favour to the first respondent herein. The acquisition became final and conclusive as far back as on 15.7.1971 when Section 6 declaration came to be issued. At no point of time was there any challenge to either preliminary notification dated 21.9.1967 or the final declaration notified on 15.7.1971. Even the award dated 21.11.1983 approved on 29.11.1983 was not the subject matter of challenge in any proceedings.

16. xxx xxx xxx

17. xxx xxx xxx

18. In our considered opinion, the Division Bench failed to take note of the above gross illegality committed by the Hon'ble Minister while directing the issuance of the de-notification dated 05.10.1999 in spite of the fact that possession had already been handed over to the State as early as on 09.12.1983 and that the decree of the Civil Court did not in any way create any fetters on the authorities concerned to take steps for possession by resorting to appropriate legal means. At the risk of repetition, it will have to be stated that the Civil Court decree to that effect was dated 15.12.1981 and that the possession was taken by taking necessary steps under the provisions of the Land Acquisition Act under the Mahazar dated 09.12.1983 which was never challenged by any party much less the first respondent herein. The Division Bench unfortunately completely omitted to take

note of the relevant facts while interfering with the order of the learned Single Judge. The appeals, therefore, stand allowed. The order of the Division Bench is set aside and the order of the learned Single Judge dated 26.8.2002 passed in Vijaya Leasing Ltd. v. State of Karnataka stands restored by this common judgment."

(underlining is ours)

116. The above judgment throws some light as to how certain excess role played on behalf of the State without any justifiable reasons were brought to the notice of the Court, the Court should not hesitate to set aside such orders in the interest of Rule of Law. When we compare the facts set out in paragraph 15 of the said judgment, when we refer to the facts dealt with by us in this case, we have noted as to how after surrender made by M/s.Dalmia had become conclusive as on 31.01.2002, on behalf of the State Government the very same officer who held the post of Director of Mines and Geology as on 25.08.2001 came forward to recommend for the transfer applied for by M/s.Dalmia on 04.02.2002, in the recommendation order dated 06.02.2002 and by simply glossing over the gross violations of the Forest Act, 1980, the order came to be passed on 16.03.2002 approving of the transfer applied for by M/s.Dalmia in favour of the first respondent. In the said circumstances, the order of the learned Single Judge in setting aside

the said order dated 16.03.2002, was perfectly justified and the interference with the same by the Division Bench by the order impugned is required to be set aside, in view of the various incongruities which were prevalent in the case on hand.

117. We are, therefore, convinced that when once M.L. No.2010 had come to an end by virtue of the surrender effected by M/s. Dalmia and accepted by the State Government, there was no legal right or power with the State Government or any authority acting on behalf of the State Government to consider the very application for transfer made at the instance of M/s. Dalmia on 4.2.2002 and for passing the order of transfer dated 16.3.2002. It can only be stated that such a decision taken and passed in the order dated 16.3.2002 was in total violation of the provisions of the MMDR Act and the Mineral Concession Rules. It will have to be stated that once surrender of M.L. No.2010 had come into effect the only other course open to the State Government was to invoke Rule 59 by throwing open those lands by way of public auction in order to get the maximum revenue by granting any lease hold rights. Here again, it must be stated that apart from the act of surrender made by M/s.Dalmia which became final and conclusive due to non-compliance of the conditions imposed in the in-principle Stage I clearance dated 24.12.1997,

M/s.Dalmia lost its right to retain the lease and the consequence of it rendered the lease itself void as per Rule 37(1A) and on this ground as well, there was no scope for the State Government or any other Authority acting on its behalf to have considered the transfer application of M/s.Dalmia with reference to a lease which ceased to exist as from 31.01.2002 due to the act of surrender and in any case from 24.12.2002 when the 5 year period to comply with the conditions imposed in the order dated 24.12.1997 expired.

118. In this context, it will be more relevant to state that mines and mineral being national wealth, dealing with the same as the largesse of the State by way of grant of lease or in the form of any other right in favour of any party can only be resorted to strictly in accordance with the provisions governing disposal of such largesse and could not have been resorted to as has been done by the State Government and the Director of Mines and Geology of the State of Karnataka by passing the order of transfer dated 16.3.2002. Such a conduct of the State and its authorities are highly condemnable and, therefore, calls for stringent action against them.

119. In the light of our above answers to the various questions posed for consideration, we hold that the subsequent stage-I in-principle approval dated 13.09.2006 and the final approval dated 09.09.2010 based on the acceptance of the transfer of lease in the order dated 16.03.2002 cannot survive and the same are set aside. As we have set aside the stage-I in-principle approval dated 13.09.2006 and the final approval dated 09.09.2010 which were not allowed to operate, we observe that whatever statutory payments made in compliance of the said orders are refundable to the party who made the payments. We, however, make it clear that the payments made in pursuance of the in-principle stage-I approval or final approval of the first renewal granted *ex post facto*, covering the period from 1983 to 2003 shall not be refundable. Further, as serious allegations were raised by M/s. Dalmia when the lease was in force that there were encroachments into the lands held by it, at the instance of the first respondent, we direct the Mining as well as Forest Authorities to ensure that the entire extent of 331.44 hectares of land covered by M.L. No.2010 is surveyed, demarcated and its physical possession by the State/Forest Authorities be ensured by removing whatever encroachments, if any, exist in the said land. We also direct that in order to ensure that no further encroachments take place into the

said land, necessary steps as required under Rule 59 of Mineral Concession Rules are taken for leasing out the lands in accordance with law and by following the required statutory procedure. The appeal is allowed and the order of the Division Bench is set aside with the above directions. No costs.

.....J.
[Fakkir Mohamed Ibrahim Kalifulla]

.....J.
[Shiva Kirti Singh]

New Delhi;
March 12, 2015