SUPREME COURT OF INDIA

State of Gujarat & Ors.

Vs.

Nirmalaben S. Mehta & Anr.

C.A.No.6209-6211 of 2016

(V.Gopala Gowda and Arun Misra,JJ.,)

13.07.2016

JUDGMENT

V.Gopala Gowda,J.,

SLP (C) Nos.9823-9825 of 2012

1. Leave granted.

2. These appeals are directed against the common judgment and order dated 13.12.2011 passed by the High Court of Gujarat at Ahmedabad in LPA No. 683 of 2011 in SCA No. 6897 of 2010, LPA No. 684 of 2011 in SCA No. 6899 of 2010 and LPA No. 685 of 2011 in SCA No. 6898 of 2010 urging various legal grounds and praying to set aside the same.

3. Brief facts of the case are stated hereunder to appreciate the rival legal contentions urged on behalf of both the parties: One Kantilal Mohanlal Mehta entered into lease agreement with the appellant-State on 20.02.1964 for mining lease for bauxite in respect of lands described in Part I of the Schedule to Mines and Minerals (Development and Regulation) Act, 1957 (hereinafter called the "MMDR Act"). The said lease was for 20 years and was given effect from 09.10.1963.

4. On 26.02.1964, the appellant-State issued a notification bearing no.MND 1760/3788G.V.reserving all areas of Jamnagar and Junagadh district for exploitation of bauxite for public sector. However, on 02.08.1978, again a notification was issued by the appellant-State, whereby the lands, specified in the schedule thereto, which were earlier reserved vide notification dated 26.02.1964, for exploitation of bauxite for the public sector were de-reserved and thus, made available for grant of mineral concession w.e.f. 02.09.1978. The same day, i.e., on 02.08.1978, the appellant-State addressed a letter to the Central Government seeking permission for de-reservation of the areas of bauxite in Jamnagar and Junagadh districts, which were earlier reserved for exploitation of bauxite in public sector for setting up of alumina plant on the ground that many applications were received by it for the

establishment of small scale industries in the State based on bauxite as raw material. The appellant-State, therefore, desired to release areas, which were earlier reserved, to industrial units for their captive consumption only. By this letter the appellant-State sought permission not only for de-reservation of the areas, which were earlier reserved for public sector but also to impose certain conditions upon the mining of bauxite with a view to protect the interest of the State and at the same time extending help to industries which require bauxite as a raw material for bonafide captive use. The relevant portion of the aforesaid letter dated 02.08.1978 reads thus:

> "5. Central Government may kindly be moved in the interest of mineral development to grant permission under Rule 27 of the Mineral Concession Rules, 1960 for imposing the following conditions for protecting the interest of the State Government and at the same time extending help to industries which need bauxite for its bonafide captive use.
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> (1) the lessee shall establish an industrial unit consuming bauxite as main raw material within a period of two years from the date of grant of the mineral concession.
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> (2) the State Government shall have right to review and reduce the areas of mining lease for bauxite granted, if the industrial unit set up works continuously below the rated capacity and areas granted is found excess of its requirements.
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> (3) the lessee shall utilize maximum quantity of bauxite excavated in his own industrial unit and shall be allowed to sell the bauxite not suitable for its own industrial unit to other industrial unit in the State for their own consumption, provided the quantity of bauxite for sale does not exceed 20% of the total production and also provided that the prior permission of the D.G.M. or an officer authorizes by the State Government is obtained for the sale.
>
> (4) the lessee shall have to sell the bauxite at prevailing market rate to government or the person to whom the State Government may direct, as and when such need arise.
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> (5) Briefly the Central Government's approval to the following proposal is required;
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> (1) to de-reserve the areas of Kalyanpur Taluka of Jamnagar-District mentioned in the Govt. of India letter dated 17.03.1962.
>
> (2) to stipulate conditions mentioned above."

5. On 16.01.1980, Central Government addressed a letter bearing No.4(2)/78-NVI to the appellant-State, whereby, it granted permission for de-reservation of areas of Jamnagar for exploitation of bauxite mineral, which were earlier reserved, and for the imposition of conditions on mining lease. The relevant portion of the aforesaid letter reads thus:

"2. As regards the proposal contained in Para 5 of the State Government's letter dated 02.08.1978, I am directed to say that the Central Government has no objection if such clauses are included under Rule 27(3) of Mineral Concession Rules, 1960 for the de-reserved area."

6. On 27.02.1992, a circular was issued by the State Government permitting sale/export of Non-Plant Grade (NPG) bauxite. During the period from 10.04.2003 to 04.03.2005 various notifications were issued by the Central Government in exercise of its power under Section 9(3) of the MMDR Act, 1957 and Rule 64D of the Mineral Concession Rules, 1960, laying down the guidelines for computation of royalty on the basis of State wise mineral value to be notified by the Indian Bureau of Mines (IBM).

7. On 28.11.2007, respondent no.1- Nirmalaben S. Mehta sought the permission of the appellant-State for sale of NPG bauxite for a quantum of 1 lakh metric tonnes (approx). The appellant-State vide its order dated 15.02.2008 granted permission for sale of NPG bauxite subject to condition, interalia, that the respondent no.1 shall deposit royalty of Rs. 120 per metric tonne in advance with the appellant-State.

8. The respondent no.1 again applied to the appellant-State by letter dated 18.02.2008 for sale of 1,12,900 metric tonnes of NPG bauxite. The same was rejected by the appellant-State vide order dated 19.06.2008 holding that the respondent no.1 has failed to establish captive plant within a period of two years in accordance with prevailing policy. The relevant portion of the aforementioned order reads thus:

"5. Sanction of lease area was accorded to the lease holder for establishing bauxite base unit for his own consumption use. However, such unit is not yet setup by the lease holder and the minerals at the lease area is not utilized for its value addition purpose. Valuable and useful mineral was being excavated in the bulk and the same was exported/sold. This activity is not found befitting to wider interest of the state."

9. Aggrieved by the orders dated 15.02.2008 and 19.06.2008 passed by the appellant-State, the respondent no.1 approached the High Court of Gujarat at Ahmedabad by filing Special Civil Application. The learned Single Judge vide order dated 31.07.2008 dismissed the application holding that the respondent no.1 had not exhausted the statutory remedy available under Section 30 of the MMDR Act, 1957 read with Rule 54 of the Mineral Concession Rules, 1960. Instead of approaching the High Court, the respondent no.1 should have approached the Central Government which is the Revisional Authority under the MMDR Act, in the matter.

10. Thereafter, respondent no.1 approached the Central Government by filing Revision Application No. 09/16 of 2008 against the order dated 19.06.2008 passed by the appellant-State. The Central Government vide its order dated 27.08.2009 allowed the said Revision Application by setting aside the order dated 19.06.2008 passed by the appellant-State holding thus:

"5 We have gone through the case records carefully and after hearing the both sides come to the conclusion that-

(a) as far as the instant case is concerned, it is not a case of fresh grant of mining lease but one of renewal.

(b) no conditions of setting up of captive plant of bauxite was mentioned while granting mining lease.

(c) no restriction was put on export and mining of bauxite in mining leases.

(d) applicant if exporting bauxite for more than a decade.

(e) guidelines issued by the State Govt. vide G.R. dated 04.02.2005 as only an administrative in nature.

(f) the approval of Central Government given vide letter No. 4(2)/78-VI dated 16.01.1980 in pursuance of State Government communication dated 02.08.1978 is not applicable in respect of the area already under lease and to which neither reservation nor de-reservation would be applicable.

6. In view of the above circumstances and taking all aspects into consideration we come to the conclusion that in the instant case while rejecting the applicants renewal application State Govt. has not followed the due process of law under Rule 27(3) of the Mineral Concession Rules, 1960."

11. Aggrieved by the aforesaid order dated 27.08.2009 passed by the Central Government in exercise of its revisional power under Section 30 of the MMDR Act, 1957 read with Rule 55 of the Mineral Concession Rules, 1960, the appellant-State approached the High Court of Gujarat at Ahmedabad by filing Special Civil Application No. 6897 of 2010. The learned Single Judge vide order dated 22.12.2010 dismissed the said Special Civil Application holding that the appellant-State ought not to have suppressed the material fact of Writ Petition being filed before the High Court of Delhi at New Delhi with regard to the same matter. The learned Single Judge further imposed costs of Rs.50,000/- on the appellant-State.

12. Aggrieved by the Order dated 22.12.2010 passed by the learned Single Judge, the appellant-State approached the Division Bench of the High Court of Gujarat at Ahmedabad by filing Letters Patent Appeal No.683 of 2011. The High Court vide its common judgment and order dated 13.12.2011 partly allowed the appeals to the extent of setting aside the order of the learned Single Judge imposing cost of Rs.50,000/- upon the appellant-State. Hence, these Appeals.

13. Mr. Parag Tripathi, the learned senior counsel for the appellant-State contended that the High Court has failed to consider that huge quantity of bauxite has been exported by the

lease holders without informing the appellant-State and without paying due amount of royalty. Only with a view to regulate the trade of bauxite, vide Resolution dated 04.02.2005 the appellant-State had framed policy for taking prior approval before exporting bauxite outside India. He further submitted that by way of the said resolution a mechanism is framed so that the trade of bauxite, especially the export can be regulated by the appellant-State. Bauxite being a valuable mineral which is available in rare pockets of the State of Gujarat, such a step is necessary on the part of the appellant-State which enables it to take necessary action with regard to the same. It was further submitted by him that as per the data available with the appellant-State from 2004 onwards, around 70% to 90% of bauxite excavated from the land in the areas by the lease holders was exported from the leased areas. Thus, if such a huge quantity of bauxite is exported outside India it would certainly jeopardise the purpose of establishing the bauxite based value addition projects in the State. Further, export of bauxite in such a huge quantity might lead to non-availability of bauxite for consumption in the State. He further submitted that the resolution dated 04.02.2005 was indirectly accepted by the lessee-respondents and even applications were filed in tune with the same. He further contended that the High Court has committed error while not considering the purpose and object advanced by the appellant-State vide resolution dated 04.05.2005.

14. It was further contended by him that the application dated 28.11.2007 made by the lessee-respondents to the appellant-State seeking permission of sale/export of NPG bauxite for quantum of 1, 12, 900 MTs, was based on the premise that they were seeking permission to export the bauxite which is not useful for the plant. However, factually, from almost five decades, the lessee-respondents have not taken any step for the establishment of captive plant. He further submitted that from the circumstances it is clear that the lessee-respondents are only interested in excavation of the bauxite for export purpose which would result in irreparable depletion of the valuable mineral for domestic purpose. The High Court has failed to take note of this important aspect while passing impugned judgment and order and therefore, the same is required to be interfered with by this Court in exercise of its appellate jurisdiction.

15. It was further contended by the learned senior counsel for the appellant-State that the High Court has erred in coming to the conclusion that the permission granted by the Central Government under Rule 27(3) of the Mineral Concession Rules, 1960 vide letter dated 16.01.1980 would not be applicable to the respondents' mine for the reason that since the notification reserving the area of bauxite mining did not affect their mines, it must necessarily follow that the permissions granted by the Central Government at the time of de-reservation also would not apply to their mines. It was further submitted by him that by the notification dated 26.02.1964 issued by the appellant-State the entire areas of Junagadh and Jamnagar districts were reserved for public sector. Admittedly, the respondents' mine fell within Jamnagar district, a reserved area, though the respondents were not affected by the reservation as the said reservation was made to operate prospectively.

16. He further submitted that the appellant-State wrote a letter dated 02.08.1978 to the Central Government seeking permission under Rule 27(3) of the Mineral Concession Rules, 1960 for de-reservation of the areas of Junagadh and Jamnagar Districts and for imposition

of certain conditions, including establishment of an industrial unit for captive consumption of bauxite. The permission for the said de-reservation was granted by the Central Government vide letter dated 16.01.1980. He further submitted that once it is admitted that the respondents' mines fall within the area of the aforesaid Jamnagar district, it would not be correct to say that the permission of the Central Government under Rule 27(3) of the Mineral Concession Rules, 1960 for de-reservation of areas of bauxite mining would not be applicable to leases granted prior to 16.01.1980 merely because the concerned mines were not affected by the reservation. He further submitted that any other interpretation in this regard would lead to discrimination between fresh leases granted post 16.01.1980 on the one hand and renewals of existing lease granted after 16.01.1980 on the other and the same is impermissible.

17. With regard to the renewal of the lease, it was contended by him that the High Court has erred in concluding that a renewal of lease is not a fresh grant and thus, at the time of renewal of lease the appellant-State cannot impose conditions, interalia, of setting up of a captive plant. In this regard it was submitted by him that it is well settled position of law that a renewal of a lease is akin to a fresh grant and hence, in the absence of either Lease Deed or the Rules providing that renewal shall be granted on the same terms and conditions as the original grant, a renewal is governed by the law/conditions in force at the time of grant of renewal of the lease of the mining area in question. Therefore, in the case at hand, the appellant-State, at the time of grant of renewal of lease, can impose such condition/conditions, inter alia, of setting up of a captive plant. With regard to aforesaid legal submission he has placed strong reliance upon the decision of this Court in the case of *Gajraj Singh v. State Transport Appellate Tribunal*[1]. The relevant paras relied upon by him read thus:

> "38. It is settled law that grant of renewal is a fresh grant though it breaths life into the operation of the previous lease or licence granted as per existing appropriate provisions of the Act, rules or orders or acts intra vires or as per the law in operation as on the date of renewal. The right to get renewal of a permit under the Act is not a vested right but a privilege subject to fulfillment of the conditions precedent enumerated under the Act...
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> xx xx xx
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> 41. In State of M.P. & Ors. v. Krishnadas Tikaram this Court had held that it is settled law that renewal is a fresh grant and must be granted consistent with law in operation as on that date "

18. It was further submitted by him that the renewal clause in the Lease Deed of 1964 makes it very clear that any renewal of the lease shall be in accordance with the provisions of the Act and Rules in force at the time of grant of renewal. Therefore, the Revisional Authority and the High Court, both have arrived at erroneous conclusion that in the absence of condition of setting up of a captive plant in the Lease Deed of 1964, such a condition cannot be imposed at the time of grant of renewal of the lease of the area in question.

19. Per Contra, Mr. Mihir Joshi, the learned senior counsel appearing on behalf of the respondents contended that neither the Export Import policy nor the MMDR Act enacted by the Central Government impose any restrictions on sale/export of bauxite and hence, the appellant-State could not have introduced its own policy for restricting or regulating the sale/export of bauxite in conflict with policies and decisions of the Central Government.

20. It was further submitted by him that there is no question of general public importance in the instant case. It was submitted by the learned senior counsel that under the scheme of Section 9 read with Section 13 of MMDR Act and Article 162 of the Constitution of India, it is the prerogative of Central Government to frame policies with regard to major minerals. The State Governments across the country are only supposed to implement the policies made by the Central Government with regard to the grant of lease as well as renewal of lease in respect of major minerals. He further submitted that when the Central Government has deemed it fit not to impose any restrictions on sale/export of bauxite either in export/import policy or under the MMDR Act, the appellant-State being simply an implementing agency, has no authority, whatsoever, to impose any restriction in the renewal of grant order prohibiting the export of bauxite to other countries by the respondents.

21. It was further submitted by the learned senior counsel that merely because huge quantity of bauxite has been exported by leaseholders, the same does not confer any power under the MMDR Act upon the appellant-State to frame any policy with regard to the export of bauxite vide resolution dated 04.02.2005 under the guise of regulating the export of bauxite without the sanction of the Central Government. Furthermore, it is an admitted fact that the said resolution dated 04.02.2005 was passed by the State Government without the permission of the Central Government.

22. It was further contended that as per the terms and conditions of the lease deed executed between the respondents and the appellant-State there was no restriction of any kind on the sale/export of bauxite. A conjoint reading of the notification dated 02.08.1978 issued by the appellant-State, the letter addressed to the Central Government by the appellant-State on the same day seeking permission for de-reservation of bauxite areas which were earlier reserved for exploitation by the public sector undertakings and for imposing conditions of captive consumption for industrial units, read with the order dated 16.01.1980 of the Central Government make it absolutely clear that the said permission of imposing the condition of captive consumption, granted by the Central Government to the appellant-State was only for new units requiring the said lease. He further submitted that respondents were already continuing with the mining activity on the demised premises even during the alleged period of reservation. It neither formed part of reserved area nor de-reserved area. Thus, the sanction of the Central Government vide its letter dated 16.01.1980 certainly should not apply to the lease of bauxite mining area belonging to the respondents as has been rightly held by both the Revisional Authority and the High Court.

23. With regard to the renewal of lease of the mining area in question it was submitted by the learned senior counsel that concept of deemed renewal or that each renewal is a fresh

lease, would not apply to the facts of the instant case in view of the specific directions of the Central Government in its order dated 16.01.1980.

24. After considering the rival legal contentions urged on behalf of both the parties, following issues would arise for our consideration:

> "1. Whether the appellant-State has the power at the time of renewal of lease of the mining area in question to impose the condition of setting up of a captive plant by the respondents?
>
> 2. Whether the permission granted by the Central Government under Rule 27(3) of the Mineral Concession Rules, 1960 vide letter dated 16.01.1980 would be applicable to the
> respondents' mine?
>
> 3. What order?
>
> Answer to Point No.1"

25. Both the Revisional Authority as well as the High Court have erred in coming to the conclusion that a renewal of lease of the mining area in question is not a fresh grant and have wrongly concluded that at the time of grant of renewal of lease of the area, the State Government is not empowered to impose or enforce condition inter-alia, of setting up of a captive plant by the respondents.

26. The High Court has failed to appreciate an important aspect of the matter namely that for imposition of condition in the grant of renewal of lease, inter alia, of setting up of a captive plant by the respondents, the appellant-State had sought permission from the Central Government vide communication dated 02.08.1978 and the same was granted by the Central Government vide its letter no.4(2)/78-NVI dated 16.01.1980. The relevant para no.2 of the aforesaid letter, stated supra, makes it abundantly clear that the Central Government had no objection if clauses pertaining to the imposition of certain conditions upon the leaseholders are included under Rule 27(3) of the Mineral Concession Rules, 1960 with respect to the bauxite areas of Junagadh and Jamnagar districts de-reserved by the appellant-State vide notification dated 02.08.1978, which were earlier reserved for exploitation of bauxite by the public sector undertakings.

27. Further, the High Court has erred in not noticing the well settled legal proposition as laid down by this Court in Gajraj Singh's case supra, on the point that the grant of renewal of the lease in respect of the mining area in question is a fresh grant. The relevant paras read thus:

> "37. In Provash Chandra Dalui v. Bisawanath Banerjee this Court drew the distinction between the meaning of the words extension and renewal. It was held that:

"...a distinction between 'extension' and 'renewal' is chiefly that in the case of renewal, a new lease is required while in the case of extension the same lease continues in force during additional period by the performance of stipulated act. In other words, the word ' extension' when used in its proper and usual sense in connection with a lease, means prolongation of the lease."

38. It is settled law that grant of renewal is a fresh grant though it breathes life into the operation of the pervious lease or licence granted as per existing appropriate provisions of the Act rules, or orders or acts intra vires or as per the law in operation as on the date of renewal. The right to get renewal of a permit under the Act is not a vested right but a privilege subject to fulfilment of the conditions precedent enumerated under the Act. Under Section 58 of the Repealed Act, renewal of a permit is a preferential right and refusal thereof is an exception. But the Act expresses different intention. Sections 66, 70 71 and 80 prescribe procedure for making application and compliance of the conditions mentioned therein. Existence of the provisions of the Act consistent with the Repealed Act is a precondition. Grant of renewal under Section 81 is a discretion given to the authority (STA or RTA) subject to the conditions and the requirement of law. Discretion given by a statute connotes making a choice between competing considerations according to rules of reason and justice and not arbitrary or whim but legal and regular. Sections 70 and 71 read with Section 81 do indicate that grant of permit or renewal thereof is not a matter of right of course. It is subject of rejection for reasons to be recorded in support thereof. Therefore, right to renewal of a permit under Section 81 is not a vested or accrued right but a privilege to get renewal according to law in operation and after compliance with the preconditions and abiding the law."

(emphasis supplied by this Court)

The permission for de-reservation of bauxite areas in the above districts of the State which were earlier reserved for bauxite mining in the public interest as well as for imposition of condition, interalia, of setting up of a captive plant by the respondents the permission in this regard was granted by the Central Government vide letter dated 16.01.1980, whereby the Central Government showed no objection for the inclusion of conditions mentioned in the letter dated 02.08.1978 addressed to it by the appellant-State under Rule 27(3) of the Mineral Concession Rules, 1960 for the de-reserved area.

28. It is clear that in the absence of any provision in the lease deed or in the Act, Rules or Orders etc in operation as on the date of renewal of lease of the mining area in question providing renewal of lease in favour of the respondents shall be granted on the same terms and conditions, is governed by the law or conditions in force at the time of renewal.

29. Thus, from the factual matrix, the relevant legal provisions and the case law referred supra upon which strong reliance is placed by the learned senior counsel on behalf of the appellant-State, it is clear that in the instant case the appellant-State after 16.01.1980 had the power to impose condition interalia, for setting up of a captive plant for bauxite by the

respondents at the time of renewal of their lease. Therefore, the impugned order passed by both the Revisional Authority and High Court are vitiated in law and therefore, the same are liable to be set aside.

Thus, point no.1 is answered accordingly.

Answer to Point No.2

30. The factual matrix of the instant case further reveals an important undisputed fact that the respondents' mines were located in the Jamnagar district, which area along with Junagadh district area was declared a reserved area for exploitation of bauxite in public interest vide notification dated 26.02.1964 issued by the appellant-State. However, the said notification did not affect the mine belonging to the respondents as the said notification was made to operate prospectively. The facts of the instant case further reveals that on 02.08.1978 the appellant-State issued a notification whereby the bauxite areas of Jamnagar and Junagadh districts were de-reserved, which were earlier reserved and on the same day addressed a letter to the Central Government seeking permission for the same along with permission for imposition of certain conditions on the leaseholders of the above area with a view to protect the interest of the State Government and at the same time extending help to the industries which require bauxite for its bona fide captive use. The Central Government vide letter dated 16.01.1980 granted permission in favour of the State Government for both i.e., it allowed de-reservation of the bauxite areas of Jamnagar and Junagadh districts, which were earlier reserved, and also allowed the appellant-State to read clauses referred by it in its letter dated 02.08.1978 under Rule 27(3) of the Mineral Concession Rules, 1960 for the de-reserved area.

31. As it is an admitted fact that the respondents' mines were located in the area of the above Jamnagar district, it would not be correct as contended by the learned senior counsel for the respondent that the permission for inclusion of certain conditions including condition for setting up of a captive plant by the leaseholders under Rule 27(3) of the Mineral Concession Rules, 1960 for the de-reserved area granted by the Central Government vide letter dated 16.01.1980 would not be applicable to the respondents' lease which was granted prior to 16.01.1980 merely because their mines were not affected by the Notification of reservation dated 26.02.1964 issued by the appellant-State.

32. It has been rightly contended by the learned senior counsel on behalf of the appellant-State that any other interpretation of the above order of the Central Government in this regard would lead to discrimination between fresh leases granted post 16.01.1980 on the one hand and renewals of the existing leases granted after 16.01.1980 on the other. Such a distinction sought to be made by the respondents' counsel is impermissible in law as after 16.01.1980, a fresh grant and a renewal of existing lease of the mining area stands on the same footing.

33. The aforesaid important legal aspect of the matter has not been taken note of by the High Court as well as the Revisional Authority. Therefore, the impugned order dated 13.12.2011 passed by the High Court confirming the order dated 27.08.2009 passed by the Revisional

Authority being contrary to the approval given by the central government vide letter dated 16.01.1980 is not only erroneous but also suffer from error in law. For the reasons stated supra the impugned orders of both the High Court as well as the Revisional Authority are liable to be set aside as they are vitiated in law.

Answer to Point No.3

34. Therefore, for the aforesaid reasons, we accept the legal submissions made by the learned senior counsel on behalf of the appellant-State as the same are well founded and based on law laid down by this Court in the case referred to supra. The civil appeals are allowed by setting aside the order of the High Court dated 13.12.2011 and the order of the Revisional Authority dated 27.08.2009. The State Government is at liberty to impose such terms and conditions in the renewal of lease of the mining area in question granted in favour of the respondents. A cost of Rs.5 lakhs is awarded to the appellant-State Government in respect of these proceedings.

Judgment Referred.

[1]*(1997) 1 SCC 0650*