DELHI HIGH COURT

Dharam Veer

Vs.

Union of India, (Delhi)

Civil Writ Petition No. 411 of 1987.

(Leila Seth and Arun B. Saharya, JJ.)

17.8.1988

JUDGMENT

Leila Seth, J.

1. In this writ petition the petitioner is challenging the order of the Commissioner and Secretary to the Government of Haryana, Industries Department dt. 14th July, 1986 terminating the mining lease for silica/ordinary sand granted to him.

2. This order shall also dispose of civil writ petition Nos. 409, 410 and 1360 of 1987 as those petitions involve similar points of law and fact, pertaining to "non-observance of the principles of natural justice and non-compliance with the pre decisional requirements of Section 4-A."

3. On 29th June, 1984, the Haryana Government issued a notification under Rule 59 of the Mineral Concessions Rules, 1960 (hereinafter referred to as "the Rules") inviting applications for mining and extracting industrial grade "Silica Sand" as well as "Ordinary Sand" in respect of certain notified areas. The notification provided, inter alia, that the applicant would have to apply for both varieties of sands in the interest of harmonious and systematic working.

4. The petitioner applied for and secured three year leases for mining silica and ordinary sand in respect of the area mentioned in the petition by two separate deeds. After being put into possession, the petitioner spent large sums of monies in building roads and infrastructure to start operating the mines.

5. The lease pertaining to silica and which was demised to the petitioner from 8th Nov., 1985 for a term of three years contained a new provision in Clause

3(a) pertaining to termination. This clause, which was not there in earlier leases, reads as follows:

> "To renew
>
> (a) In case Haryana Minerals Ltd. a Public Sector Undertaking of the State Government or any other Public Sector Undertaking, applies for a mining lease over the area herein leased, during the operation of lease and if the State Government acts under Section 4A of the Mines and Minerals (Regulation and Development) Act, 1957, the lease shall stand terminated from the date on which the State Government issues a notice to the lessee under this clause and the lessee shall, immediately on receipt of a notice, handover the possession of the area demised herein, to the State Government."

6. The State Government has purported to act under this clause. The stand of the State Government is that in view of Clause 3(a) of the lease deed, the moment Haryana Minerals Ltd. or any other Public Sector Undertaking applies for the grant of a mining lease for the area; the State Government can automatically grant a lease to the said Corporation and terminate the lease of the petitioner. In fact, this is what they have purported to do by the order of 14th July, 1986. The order of termination is as follows:

> "Termination of mining leases for silica ordinary sand in terms of Clause 3(a), Part VIII of the Lease Deed for silica sand.
>
> Whereas you were granted leases for the extraction of silica sand and ordinary sand for a period of three years from 50 hectares of land situated in village Pali, in terms of lease deed executed by you with the State Government on 8/11/85; and
>
> Whereas Haryana Minerals Limited, a State Government Undertaking has applied for the grant of mining leases for silica/ordinary sand from 50 hectares of land in village Pali and the State Govt. has granted mining leases for the same area to it, namely, Haryana Minerals Limited vide their Order No. IBII/86/24419-A dt. 14.7.1986.
>
> Now, therefore, in terms of the provisions of Section 4A of the Mines & Minerals (Regulation & Development) Act, 1957 read with Clause 3(a) of Part VIII of the lease deed, the State Government hereby terminates

your leases for the extraction of silica and ordinary sand from 50 hectares of land in village Pali for the remaining period with immediate effect. You are, therefore, called upon to handover possession of the aforesaid plot forthwith to the General Manager, District Industries Centre, Faridabad."

7. It is apparent from the said order of termination that on the application of the Haryana Minerals Ltd., the State Government granted a mining lease for the same area in village Pali by its order dated 14th July, 1986 and that was the reason for terminating the lease of the petitioner with immediate effect and directing him to handover possession forthwith. The General Manager, District Industries Centre, Faridabad, in fact, took possession immediately.

8. The main point in issue is, did the State Government act under Section 4A of the Mines and Minerals (Regulation and Development) Act, 1957 (hereinafter referred to as "the Act") as required in Clause 3(a) in Part VIII of the lease deed.

9. In order to appreciate the dispute, it is necessary to set out Section 4A of the Act, (as it stood at the relevant time), which reads:

"4A. *Termination of mining leases* - (1) Where the Central Government after consultation with the State Government is of opinion that it is expedient in the interest of regulation of mines and mineral development so to do, it may request the State Government to make a premature termination of a mining lease in respect of any mineral, other than a minor mineral and on receipt of such request, the State Government shall make an order making a premature termination of such mining lease and granting a fresh mining lease in favor of such Government company or Corporation owned or controlled by Government as it may think fit.

(2) Where the State Government, after consultation with the Central Government, is of opinion that it is expedient in the interest of regulation of mines and mineral development so to do, it may, by an order, make premature termination of a mining lease in respect of any minor mineral and grant a fresh in respect of such mineral in favour of such Government company or corporation owned or controlled by Government as it may think fit."

10. Mr. P.P. Rao, learned counsel for the petitioner urged that no order could be made under Section 4A of the Act prematurely terminating the lease without giving the lessee a reasonable opportunity of being heard. Apart from this, he contended that the initiative for terminating the particular lease must come from the Central Government that it is in the interest of regulation of mines and mineral development; it is on the request of the Central Government that the State Government acts in the case of a major mineral like silica.

11. It would have been necessary for us to examine the provisions of Section 4A and decide what exactly Section 4A requires. But the matter is no longer res integra. The present writ petition was postponed time and again for about a year to await the decision of the Supreme Court in *State of Haryana v. Ram Kishan,*.[1]

12. Certain persons, being Ram Kishan and others, who had been given leases for silica and ordinary sand by the State of Haryana for a period of ten years, had their leases terminated under Section 4A and challenged the termination. The ground of challenge was, inter alia, that they had neither received any prior notice nor were given any opportunity to place their case. This Court by its judgment and other dt. 14th Dec., 1986 held that premature termination without notice and an opportunity of hearing was illegal and without jurisdiction. The State of Haryana appealed to the Supreme Court against the said judgment. The Supreme Court by its judgment and order dt. 6th May, 1988. (Reported in AIR 1988 Supreme Court 1301) dismissed the appeals and affirmed the order of the Delhi High Court. Mr. Justice Lalit Mohan Sharma speaking for the Court noticed :

> "Silica sand being a major mineral is governed by sub-section (1) of Section 4A and ordinary sand by sub-section (2). According to the appellant full and necessary consultation between the two Governments i.e. the Central Government and the State Government was held and it was considered expedient in the interest of regulation of mines and mineral development to take the impugned decision. Reference in this regard was made by the learned counsel to the report of the Indian Bureau of Mines referred to in the letters of the Director, Department of Mines, Central Government to the Chief Secretary, Government of Haryana, dt. 20th April, 1958, 8 July, 1985 and 10th July, 1985 and the State's letters dt. 14th July, 1985, 17th Sep., 1986 and 29th Sept., 1986. It has been contended that since a decision was jointly taken by the two

Governments to grant mining lease of the entire area to the Haryana Minerals Limited, this by itself fulfilled the necessary conditions under Section 4A and as the writ petitioners-lessees had no locus stand to place their point of view with respect to this aspect, it was not necessary to give them a notice. The argument is that in the circumstances there is no question of violation of principles of natural justice. It was also claimed that the State was the final authority to take a decision under Section 4A with respect to both major and minor minerals."

13. The learned Judge, however, opined as follow:

"The language of Section 4A clearly indicates that the Section by itself does not prematurely terminate any mining lease. A decision in this regard has to be taken by the Central Government after considering the circumstances of each case separately. For exercise of power it is necessary that the essential condition mentioned therein is fulfilled, namely, that the proposed action would be in the interest of regulation of mines and mineral development. The question of the State Government granting a fresh mining lease in favour of a Government Company or a Corporation arises only after a decision to terminate the existing mining lease is arrived at and given effect to. The Section does not direct termination of all mining leases, merely for the reason that a Government Company or Corporation has equipped itself for the purpose. The Section was enacted with a view to improve the efficiency in this regard and with this view directs consultation between the Central Government and the State Government to be held. The two Governments have to consider whether premature termination of a particular mining lease shall advance the object or not and must, therefore, take into account all considerations relevant to the issue, with reference to the lease in question. It is not correct to say that an existing mining lease can be terminated merely for the reason that a Government Company or Corporation is ready to undertake the work."

14. Consequently the learned Judge held that Section 4A had to be interpreted to mean that persons who were to be affected by a decision must be afforded an opportunity to prove that the proposed steps would not advance the interest of mines and mineral development. Not to do so would be to violate the principles of natural justice. His further observation is pertinent. "Since there is no

suggestion in the Section to deny the right of the affected persons to be heard, the provisions have to be interpreted as implying to preserve such a right". Consequently, the Supreme Court held that "a final decision to prematurely terminate a lease can be taken only after a notice to the lessee".

15. Faced with the above mentioned decision of the Supreme Court, the Advocate General appearing for respondent 2 argued that the word "and" in Clause 3(a) should be read as "or" and consequently the State Government did not have to go through the required procedure under Section 4A of the Act. He contended that the moment Haryana Minerals Ltd. or any other public sector undertaking applied for a mining for a particular area the earlier lease would stand terminated from the date the State Government issued a notice to the lessee and on receipt of the notice under Clause 3(a), the lessee would have to immediately handover possession of the demised area to the State Government.

16. The learned Advocate General further submitted that this was the clear intention of the parties as far back as 20th April, 1985, when the Central Government wrote to the Chief Secretary, Government of Haryana informing him that the mining areas under the existing leases were being worked unscientifically and in total disregard of the safety rules; that the "attractions to quick financial gains have contributed to a near total negligence of responsibilities of proper exploration, scientific development and optimal exploitation of the deposits". As such, the confidential report of the Indian Bureau of Mines on silica sand should be considered carefully and certain provisions incorporated to ensure safe and scientific mining of silica sand.

> 17. It was also mentioned in the said letter that the Central Government did "not consider it advisable that on premature termination of mining leases of private parties the same area should be divided and sub-divided and again leased out to a larger number of private parties. Instead the State Government may consider entrusting the task of scientific, optimal and planned exploitation of silica sand reserves to a State Public Sector Corporation which would be interested in such an activity."

18. In continuation of the above mentioned letter, the Government of India on 8th July, 1985 wrote to the Government of Haryana and indicated that specific conditions should be incorporated in the leases for approval of the mine plans by the Indian Bureau of Mines. The mining operation must be carried out

strictly in accordance with the approved plans and rules and regulations for safety and labor welfare. The Central Government considered it desirable, for scientific mining, safety and payment of fair wages to labor, that the entire mining operations in silica sand be carried out by Haryana Minerals Ltd., a Public Sector Undertaking of the Government of Haryana. The representatives of the Government of Haryana expressed their inability to entrust the entire work to Haryana Minerals Ltd. immediately but sought Central Government approval in respect of two areas.

19. Consequently, the Government stated as follows:

> "In deference to the State Government's wishes, the Central Government's approval to the grant of the above cited two areas in favor of Haryana Minerals Ltd. is being given separately. As regards the State Government's proposal to grant mining lease in Faridabad the Central Government is of the view that the extent of the plots arising out of the decision of the State Government to divide the original lease into 15 separate leases was so small that they did not lend themselves to optimum economic systematic development even if one holds the view it would meet the limited point of requirements of mines safety. However, as the State Government is insisting, it was agreed, as a one time exception, that the State Government may grant leases over these plots for a period of not more than three years. It was indicated by Chief Secretary, Government of Haryana in the meeting held on 26.6.1986, that Haryana Minerals Ltd. would equip themselves in all respects to undertake the mining well within the period of 3 years sooner than later. As soon as Haryana Minerals are thus in a position to take over the mining, steps will be taken to terminate the leases under the relevant provisions of the Mines and Minerals (Regulation and Development) Act and the Mineral Concession Rules, 1960. A suitable condition shall be incorporated in the lease deed itself, to avoid complication later."
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> It is stated in para 8 of the said letter "that special conditions as indicated in the Annexure may be incorporated in all the mining leases for silica sand to be granted to private parties." As such, the Central Government in exercise of he powers conferred under Rule 27(3) of the Mineral Concession Rules, 1960 approved the inclusion of the special conditions as detailed in the annexure, Clause 3(a) of the lease-deed, with which

was are presently concerned is one of those special conditions.

20. Consequently, the learned Advocate General argued that it is in this background that this clause has to be interpreted. Therefore, according to him, the only thing to be done for terminating the lease was that Haryana Minerals Ltd. had to make an application and the lease would stand terminated from the date the State Government issued a notice to the lessee to handover possession of the demised premises. The requirement of notice under Section 4A of the Act to the petitioner before premature termination, the urged, had been given a go by in view of Clause 3(a), as it was only after consultation between Central Government and State Government that the clause had been incorporated.

21. The learned Advocate General further submitted that the State had ownership rights which were validly acquired by it and as such it had an inherent right to deal with minerals and automatically terminate the lease, see *State of Haryana v. Chanan Mal,* [2] and *Amritlal Natthubhai Shah v. Union of India,* [3]

22. Mr. Kapil Sibal, learned counsel appearing for Haryana Minerals Ltd., however, did not go as far as the learned Advocate General. His contention was that Clause 3(a) of the lease deed indicated that action had to be taken under Section 4A by the State Government. Since the Central Government had already taken a decision as above indicated, in its two letters that it did not want any mining activities by private entrepreneurs but was permitting it as a one time exception, the Central Government's opinion and request to the State Government were already there in terms of Section 4A and the State Government had only to pass the order of premature termination.

23. The fallacy in the argument appears to be that the letters dt. 20th April, 1985 and 8th July, 1985 are correspondence pre-lease deed. The mention of Section 4A in Clause 3(a) of the lease-deed is a part of the agreement. In fact, what the Central Government has done is to grant approval under Rule 27(3) of the Rules to the State Government to impose a special condition in the contract. This condition has been imposed with the approval of the Central Government, but it has not given a go by to the provisions of Section 4A of the Act. It appears to us that this special condition has been incorporated in the lease deed to put the lessee on notice that termination is likely during the course of the three years lease period. It cannot be interpreted to mean that the principles of

natural justice and the provisions of Section 4A have been done away with.

24. Mr. Wazir Singh, learned counsel appearing for respondents 1 and 3, argued that under Section 4A there are certain functions assigned to the Central Government and certain functions assigned to the State Government. What Clause 3(a) of the lease deed contemplated is that the functions assigned to the Central Government need not be gone through, it is only the State Government that has to act on the application of the Haryana Minerals Ltd. or any other public sector corporation.

25. This argument is unacceptable. Though it is correct that the actual grant of the lease and premature termination thereof are functions to be performed by the State Government, they have to be done in a certain manner and after following certain procedure such of consultation and request of the Central Government. If the intention of Clause 3(a) was what Mr. Wazir Singh contends then all that had to be said is what the learned Advocate General has argued "that on the application of the Haryana Minerals Ltd. the lease of the petitioner would be automatically terminated and a notice of this fact be served on the petitioner who would immediately have to handover possession. No mention of Section 4A need have been made. The very fact that Section 4A of the Act has been referred to and the provisions thereof are to be complied with by the State Government would indicate that the procedure contemplated in the said section has to be gone through.

26. The Supreme Court has in Ram Kishan's case (supra) made it clear that there can be no blanket premature termination. The Central Government has to take a decision after considering the circumstances of each case separately whether it is in "the interest of regulation of mines and mineral development". It is, therefore, apparent that the observance of the principles of natural justice is a sine qua non for the termination of the lease. Consequently, Clause 3(a) of the statutory lease deed, which provides for the State Government to act in terms of Section 4A has not been complied with as admittedly, no notice was given as required by the above mentioned section and, in fact as is apparent from the order of termination a lease was first granted to Haryana Minerals Ltd. on its application and that was the reason for prematurely terminating the petitioner's lease. The grant of Haryana Minerals Ltd. was prior to the termination of the petitioner's lease. Is this not a case of putting the cart before the horse?

27. The only difference in the cases before the Supreme Court and the case before us is the insertion of Clause 3(a) in the lease deed and the period of the lease being three years instead of ten. It appears to us that this makes no real difference as all that the above mentioned clause does is to put the lessee on notice that termination of the existing lease is in contemplation, provided Haryana Minerals Ltd. or any other public sector corporation makes an application and the provisions of Section 4A are complied with. It is incorporated to put the lessee or guard of the likelihood of such an eventuality, especially as the lessee has to spend money on infrastructure to do the work of mining.

28. The Central Government's opinion has to be separately arrived at considering the circumstances of the case that it is expedient in the interest of development and regulations of mines under Section 4A of the Act. It cannot be held that the Central Government's above mentioned letters are its opinion and request in terms of Section 4A of the Act that it is in the interest of regulations of mines and mineral development to prematurely terminate the lease. The expression of opinion by the Central Government in its above mentioned letters, that the leases were being approved as a onetime exception does not mean that the lease can be automatically terminated as a matter of policy of the Central Government that silica/ordinary sand should be mined by public sector corporations. It is one thing not to have given approval or granted a lease. It is quite another having granted it to terminate it without notice and without following the provisions of the Act and rules and in particular Section 4A.

29. The very two letters on which counsel for the Haryana Minerals Ltd. has relied so strongly, were amongst the letters considered by the Supreme Court in Ram Kishan's case (supra), where a similar argument was made and the Supreme Court held that it did not amount to compliance with Section 4A of the Act and the party has to be given an opportunity of hearing.

30. That words in clause should be given their natural meaning is too well known a proposition. It is not permissible to give the words any other meaning unless there is an ambiguity. In the present case and context, there appears to be no ambiguity.

31. Clause 3(a) was introduced by virtue of the power provided under the statute in terms of Rule 27(3) of the rules. Public orders cannot be interpreted

by subsequent explanations and must be construed objectively on the basis of the language used. (See *Commr. of Police, Bombay v. Gordhandas Bharji,* [4] and *Mohinder Singh v. Chief Election Commr., New Delhi,*). [5]

32. Where no intention is indicated to dispense with the requirement of Section 4A or the Act or Rules, it cannot be so interpreted. Earlier, lessees had normally been granted leases for ten years, since the lease was for a shorter period of three years, it was necessary to put the lessee on notice that under Clause 3(a) there was a likelihood of premature termination in terms of Section 4A of the act. Consequently, it is not possible to accept the argument of the learned Advocate General and read the word "and" as "or" in Clause 3(a) of the lease.

33. The argument of the learned Advocate General that since the State Government is the owner of the mines, it can do anything it wants and can automatically terminate the lease without complying with any provision appears to be on the fact of it unsound. The question is, can the Haryana Government contract outside the Act. The lease is a statutory lease and the specific clause inserted in the lease has been introduced under the Rules and within the ambit of the Act. Subordinate legislation cannot override superior legislation. The interpretation which renders the clause valid must be accepted rather than the interpretation which renders it ultra virus the statute.

34. In any case, the Supreme Court has said that there can be no class decision on the matter but the Central Government must apply its mind to each individual case. In the words of the Supreme Court in Ram Kishan's case (supra), the Central and the State Governments have to consider "whether premature termination of a particular mining lease shall advance the object or not, and must, therefore, take into account all considerations relevant to the issue, with reference to the lease in question. It is not correct to say that an existing mining lease can be terminated merely for the reason that a Government Company or Corporation is ready to undertake the work".

35. It is also clear that if the Central Government did take some sort of a general decision that leases were being granted as a onetime exception and that the Haryana Minerals Ltd. should operate in that area that opinion of the Central Government before the lease was granted, cannot be the opinion contemplated under Section 4A of the Act. Section 4A of the Act contemplates an existing lease and the opinion contemplated therein cannot be the conclusion arrived at

by the Central Government before the lease has been executed. It is only after execution of the lease and during the existence of a lease that the provisions of Section 4A come into play. One cannot terminate what does not exist. The application by Haryana Minerals Ltd. provided the cause for attracting Clause 3(a) and for examining the matter. It cannot be held to be the sole condition for exercise of the power and automatic termination.

36. Mr. Wazir Singh appearing for the Central Government also urged that a writ petition was not maintainable and the only remedy available to the petitioner was by way of a civil suit. This is not a case of an ordinary contract but is a statutory lease and/or a statutory contract and a writ of certiorari can issue for quashing an order that has been issued in breach of the provisions of Section 4A of the Act, violating the principles of natural justice.

37. The decision in *Radhakrishna Agarwal v. State of Bihar,* [6] on which reliance was placed is clearly distinguishable. That was a case of an ordinary contract and the challenge was on the basis of Article 14 to the revision of royalty rates. In fact, in paragraph 11, Chief Justice Beg speaking for the Court observed that in the cases before us contracts do not contain any statutory terms or obligations.

38. Consequently, we hold that the provisions of Section 4A were required to be followed and were in fact not complied with. The statutory requirement of observing the principles of fair play and natural justice were admittedly not observed. We, therefore, quash the order of the premature termination dt. 14th July, 1986."

39. Mr. P.P. Rao, learned counsel for the petitioner, referring to the lease for minor minerals i.e. ordinary sand finally urged that there was no provision such as Clause 3(a) in the said lease. Consequently, he argued that the submissions of counsel for the respondents would not apply to that lease.

40. The learned Advocate General admitted that such a clause had not been inserted in the lease deed for ordinary sand yet in view of the judgment in *Som Parkash v. State of Haryana,* [7] *decided on 14th Jan., 1988* by the Punjab and Haryana High Court, it was clear that the lease deeds for silica sand and ordinary sand were coterminous and extricable mixed and "if one goes the other one as of necessity goes". He also relied on the decision of the Supreme Court in *Tara Prasad Singh v. Union of India,* a case of a composite mine containing

alternate seams of coal and fire clay. In view of our decision that the provisions of Section 4A were required to be complied with and have not been complied with in case of the major minerals, we need not go into this aspect of the matter.

41. The next question that arises is as to what relief is the petitioner entitled? By virtue of an illegal order his enjoyment of the lease and possession thereof has been unlawfully interrupted through circumstances beyond his control. Is he entitled to exclusion of the period of unlawful interruption? It would appear to us he is. Not to exclude the period from 14th July, 1986 till the petitioner is put back in possession would amount to perpetuating the illegal order of termination by virtue of which the respondents have taken possession. The result would be that the lease period of three years would stand unlawfully reduced to less than a year.

42. The lease deed provides in Part VIII that the lessee will hold and enjoy the rights quietly after paying the rents etc. and performing the covenants and agreements during the term of the lease without any "unlawful interruption from or by the State Government or any person rightfully claiming under it."

43. The provisions pertaining to the rule of 'force majeure' are indicative of the fact that a period of interruption can be excluded from the term period of the lease. Clause 4 provides, inter alia, that "Failure on the part of the lessee to fulfill any of the term and the conditions of this lease shall not give the Central or State Government any claim against the lessee or be deemed a breach of this lease, in so far as such failure is considered by the said Government to arise from force majeure and if through force majeure, the fulfillment by the lessee of any of the terms and conditions of this lease be delayed the period of such delay shall be added to the period fixed by this lease."

44. The expression force majeure has been held to mean, act of God, war, insurrection, riot, civil commotion, strike, earthquake, tide, storm, tidal-wave, flood, lightning, explosion, fire "any other happening which the lessee could not reasonably prevent or control". Though this is not a case of force majeure in terms, on analogous principles, it appears to us that the unlawful interruption of enjoyment caused to the lessee by the illegal act of respondent No. 2 is something that the lessee could not reasonably prevent or control and the period of this interruption should be excluded from the term of the three-year lease. It appears to us necessary as a matter of law and justice to give this consequential

relief as a result of our striking down the order of premature termination. Not to do so would result in multiplication of litigation, and depriving the petitioner who has been prejudiced of substantial relief.

45. The argument of the learned Advocate General that the three years period of the lease from 8th Nov., 1985 to 7th Nov., 1988 cannot be extended under any circumstances is not tenable, as the lease deed itself contains a clause of force majeure where this is contemplated. His other submission that this should not be done in the facts and circumstances of the case because large amounts of money have been spent by Haryana Minerals Ltd. is also not acceptable, as large amounts of money were also spent by the petitioner to get the mining operations started. The fact that the petitioner could perhaps file a suit for damages, as the premature termination has been quashed, will not be an equally efficacious and adequate remedy.

46. Mr. Sibal, appearing for respondent No. 3, has also urged that for breach of a contract the petitioner is not entitled to exclusion of the period as specific performance is not granted of a contract which is terminable; further the petitioner can be adequately compensated by damages. He relied on the decision in *Santosh Kumar v. Central Warehousing Corpn.,* [9] to endorse his submission that what is prohibited by law cannot be enforced by way of Article 226 of Constitution of India.

47. It is apparent that this is not a case of a contract simpliciter and the provisions of Section 14(1)(c) of the Specific Relief Act are not attracted. This is a case of a breach of a statutory duty to give an opportunity of hearing under Section 4A of the Act. That not having been given, the order of termination is invalid and without jurisdiction and must be quashed. As a result the order of premature termination is non-existent. It is in this context that the nature of the remedy is being considered.

48. During the arguments, a suggestion was made that notice be given and action taken under Section 4A of the Act but this suggestion was rejected by counsel for the Central Government. The Central Government clearly has power under Section 4A of the Act to initiate consultation with the State Government and is at liberty to exercise that power in terms of the said section. But it has not chosen to do so.

49. Consequently, leasing the area to Haryana Minerals Ltd. when it had

already been leased to the petitioner before terminating the petitioner's lease is a patent wrong. That a doer cannot be allowed to take advantage of its own wrong is a well known proposition of law and equity. It is in this context that we are molding the relief. The principles of natural justice which were implicit in Section 4A as it stood, and which have now been made explicit in sub-section (3) of the amended Section 4A with the effect from 22nd August, 1986, have not been followed. This has resulted in depriving the petitioner to what he is entitled.

50. For the reasons outlined above, we allow the petition and quash he impugned order. We also issue a writ of mandamus to the respondents to restore possession to the petitioner immediately. We also direct that the period of unlawful interruption shall be excluded in computing the three-year term of the lease.

51. Consequently, the rules is made absolute and the petitioner will be entitled to costs of Rs. 3000/-.

Petition allowed.

Cases Referred.

1. Civil Appeals Nos. 1472-77 of 1987; 1988(2) RRR 555

2. AIR 1976 Supreme Court 1654

3. AIR 1976 Supreme Court 2591.

4. AIR 1952 Supreme Court 16

5. AIR 1978 Supreme Court 851

6. AIR 1977 Supreme Court 1496,

7. Civil Writ No. 7931 of 1987

8. AIR 1980 Supreme Court 1682,