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Landmark Developers and Others Vs. Govt. of A.P. and Others

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Court : Andhra Pradesh

Decided On : Nov-06-2012

Judge : K.C.Bhanu

Appellant : Landmark Developers and Others

Respondent : Govt. of A.P. and Others

Advocate for Def. : Sri. Hari Sreedhar Counsel

Judgement :

THE HON'BLE SRI JUSTICE K.C.BHANU WRIT PETITION NOs.21217 of 2012 and Batch 06.11.2012 Landmark Developers & others Govt. of A.P. & others Counsel for the Petitioner : Sri Hari Sreedhar Counsel for the Respondents: Sri C.V.Mohan Reddy, Senior Advocate : : Cases referred:

1. 1996 (1) ALT 10.(D.B.) 2) (2002) 1 Supreme Court Case

3. AIR 198.SC 71.4) (2002) 1 Supreme Court Case

5. (1998) 3 Supreme Court Case

6. AIR 197.Supreme Cour

7. AIR 200.Supreme Cour

8. AIR 199.Supreme Court 1398 (1) 9) (1990) 1 Supreme Court Case

10. 1994 (42) BLJR 52 WRIT PETITION NOs.21217 of 2012, 34216 of 2011, 34372 of 2011 and 26910 of 2012 COMMON ORDER:

1. Since the subject matter of all the Writ Petitions is one and the same, they are being disposed of by this Common Order. WRIT PETITION No. 21217 of 2012:

2. This Writ Petition is filed seeking to declare the order dated 07.05.2010 in Proceedings No.1343/R6-1/2010 passed by the second respondent-Director of Mines and Geology, Hyderabad on the basis of the order dated 24.11.2008 in Memo No.14258/M.II (1)/2008-2 passed by the first respondent, which itself is void being without jurisdiction, and the consequential order dated 12.05.2010 in Proceedings No.11241/Q/2009 passed by the third respondent and also consequential Deed of Renewal of quarry lease dated 12.05.2010 in Proceedings No.11241/Q/2009 executed by the third respondent in favour of the fifth respondent, as illegal, arbitrary, void and without jurisdiction, and if necessary, declaring the order dated 24.11.2008 in Memo No.14258/M.II (1)/2008-2 passed by the first respondent as illegal, arbitrary, void and without jurisdiction.

3. The averments, in brief, stated in the affidavit filed in support of the Writ Petition may be stated as follows. Originally, M/s. Blaze Granites Private Limited, Warangal applied for quarry lease in respect of land admeasuring Ac.2.20 guntas equivalent to 1.00 hectare in Survey No.225/120 situated at Yerraballigudem Village, Nellikuduru Mandal, Warangal District on 29.7.1989 duly enclosing sketch of the area in respect of which the application for quarry lease was submitted. The then Deputy Director of Mines and Geology, Warangal, by proceedings No.2918/Q1/80, dated 25.10.1989 granted quarry lease in respect of 0.496 hectares out of the applied area in the above survey number for a period of five years with effect from 22.1.1990 (hereinafter referred to as 'first lease'). The third respondent, by order dated 22.1.1990, accorded sanction to M/s. Blaze Granites Private Limited to work over the said land. On the application of M/s. Blaze Granites Private Limited, the first lease was renewed for a period of 15 years with effect from 22.1.1995 by proceedings dated 14.3.1995 issued by the third respondent. M/s. Blaze Granites Private Limited made an application dated 25.3.2004 to transfer the first lease in favour of the fifth respondent. The second

respondent accorded permission to M/s. Blaze Granites Private Limited to transfer the first lease in favour of the fifth respondent subject to the conditions inter alia that deed transferring the quarry lease shall be executed within 60 days from the date of the order. M/s. Blaze Granites Private Limited also applied for quarry lease in respect of land admeasuring Ac.0.90 cents in survey no.225/120 and land admeasuring Ac.0.35 cents in survey no.264/1, totally admeasuring Ac.1.25 cents, of Yerraballigudem Village, Nellikuduru Mandal, Warangal District situated towards west of the area covered under the first lease. By order dated 15.6.1998, the second respondent granted quarry lease for a period of 15 years (hereinafter referred to as 'second lease'). Similarly, on the application of M/s. Blaze Granites Private Limited, the second respondent, by proceedings dated 04.01.2005, accorded permission to transfer the second lease in favour of the fifth respondent, subject to the condition inter alia that deed transferring the quarry lease shall be executed within 60 days from the date of the order. Except obtaining the permission from the competent authority to transfer the quarry lease in favour of the fifth respondent, no valid document transferring the quarry lease was executed in respect of both the first and second leases. The fifth respondent was carrying on quarry operations totally at a different place in survey no.225/120, in respect of which no quarry lease was granted either to M/s. Blaze Granites Private Limited or in favour of the fifth respondent. The sketch clearly shows the quarry lease granted to M/s. Blaze Granites Private Limited. The fifth respondent illegally carried out quarry operations in an area situated below the middle (almost on southern side) of survey no.225/120, in respect of which no quarry lease was granted. Provisions of the Mines and Minerals (Development and Regulation) Act, 1957 (hereinafter referred to as 'the Act, 1957') prohibit all the persons from undertaking mining operations in any area without a mining lease granted under the said Act and the Rules made thereunder. The Andhra Pradesh Minor Mineral Concession Rules, 1966 (hereinafter referred to as 'the Rules, 1966') prescribe the authority competent to grant lease and also the procedure to be followed for granting quarry lease. As several persons applied for quarry lease in respect of the land in survey no.225/120 and other survey numbers of Yerraballigudem Village, the third respondent instructed the surveyor to prepare a sketch of the areas in respect of which lease had already been granted and the remaining area, to

process those applications. At that point of time, it was found that the fifth respondent was carrying on quarry operations illegally in a place different from the place other than the area transferred, and as such, vide letter dated 6.8.2008, the third respondent requested necessary instructions from the second respondent with regard to granting dispatch permits. But, however, by proceedings dated 19.8.2008, the second respondent appears to have directed the third respondent to issue dispatch permits to the fifth respondent. Challenging the proceedings of the third respondent dated 6.8.2008, the fifth respondent filed a revision before the Government under Rule 35A of the Rules, 1966 and the said revision was disposed of by the first respondent by order dated 24.11.2008 granting permission to the second respondent to make change in the sketch appended to the lease deed. The said order was passed based on the representation of the second respondent as a mistake cropped up at the time of processing the application of the original licensee M/s. Blaze Granites Private Limited wrongly demarcating the area in the sketch over 180 meters away from the mineral deposit and at the request of the fifth respondent to rectify the execution sketch. Challenging the said order of the first respondent dated 24.11.2008, one of the applicants for grant of quarry lease M/s. Karunamai Granites filed Writ Petition No.9764 of 2009, which was disposed of by this court on 25.4.2011 holding that the revision filed by the fifth respondent is wholly misconceived and not maintainable, and that if the fifth respondent wanted rectification of the sketch, it should have first approached the second respondent, who is, admittedly, the authority competent and who has actually granted the lease in favour of the original grantee. When it was brought to the notice of this Court that the application of M/s. Karunamai Granites for grant of quarry lease in respect of the land in survey no.225/120 of Yerraballigudem Village, Nellikuduru Mandal, Warangal District (hereinafter referred to as 'the disputed land') where the fifth respondent was illegally quarrying the mineral, which was pending with the second respondent as on the date of passing of the order dated 24.11.2008 by the first respondent, was rejected subsequently on 5.6.2009 and as no notice was issued to the applicant before passing order in the purported revision, this court gave liberty to M/s. Karunamai Granites to file appeal before the Government against the order rejecting its application, and directed the Government that if any such appeal is filed, the claim of the fifth respondent for

rectification of the sketch appended to the lease of the original grantee be considered afresh ignoring the earlier order of the Government dated 24.11.2008. In other words, order of the first respondent dated 24.11.2008 is held to be illegal and without any authority. All the applications for grant of quarry lease pending before the second respondent in respect of land in survey no.225/120 were rejected on 5.6.2009 by the second respondent. So, petitioner filed an application on 24.6.2010 for grant of quarry lease in respect of land admeasuring 2.00 hectares in survey no.225/120 duly enclosing the sketch earmarking the area in respect of which the quarry lease application was submitted. As on the date of the application of the petitioner for grant of quarry lease, no other application for grant of quarry lease in respect of the said area, was pending before the second respondent. As the application of the petitioner for quarry lease was not processed in accordance with law, the petitioner filed Writ Petition No.28428 of 2011 against respondents 1 to 3 herein challenging their inaction. In the said Writ Petition, fourth respondent was also impleaded with the leave of the court. On 23.11.2011, the said Writ Petition was disposed of by this Court directing the respondents therein to consider the application of the petitioner for grant of quarry lease and pass appropriate orders thereon in accordance with law. As per the order of this Court in Writ Petition No.9764 of 2009, M/s. Karunamai Granites filed an appeal before the first respondent wherein interim order was passed on 12.9.2011 granting stay of operation of the order of the Government dated 24.11.2008, which had already been set aside by this Court. The fifth respondent filed Writ Petition No.26721 of 2011 on the ground that though M/s. Karunamai Granites filed a Memo seeking to withdraw the appeal, the said order was passed. The said Writ Petition was dismissed on 10.10.2011 with certain observations and directions to the Government. Against the said order, the fifth respondent filed Writ Appeal No.828 of 2011, but in the said appeal, it sought permission to withdraw the Writ Petition itself. Accordingly, the Writ Appeal and the Writ Petition were dismissed as withdrawn. As M/s. Karunamai Granites had withdrawn its appeal and also its quarry lease application, the first respondent passed order dated 9.11.2011 simply reviving the earlier order dated 24.11.2008 passed in the purported revision filed by the fifth respondent, which was held to be misconceived and not maintainable by this Court in Writ Petition No.9764 of 2009. No notice was given to the

petitioner before passing the order dated 9.11.2011 though its application for grant of quarry lease is pending consideration. Challenging the order dated 9.11.2011, the petitioner filed Writ Petition No.34216 of 2011 and sought interim suspension order. During pendency of Writ Petition No.34216 of 2011, the second respondent issued a notice dated 21.1.2012 to the petitioner to show cause as to why the quarry lease application dated 24.6.2010 of the petitioner shall not be rejected on the ground that the area in respect of which quarry lease application was submitted by the petitioner, was overlapping with the lease held by the fifth respondent herein. When the fact of issuance of the show-cause notice was brought to the notice of this Court in Writ Petition 34216 of 2011, this Court passed an interim order on 29.2.2012 directing the second respondent not to take any further action pursuant to the said show cause notice dated 21.1.2012 until further orders. On 26.6.2012, the fifth respondent filed his counter affidavit and additional counter affidavit in Writ Petition No.34216 of 2011. Then the petitioner came to know that the second respondent, vide proceedings No.1343/R6- 1/2010, dated 7.5.2010 renewing the quarry lease in respect of the land covered under first lease, in favour of the fifth respondent for a further period of 20 years with effect from 22.1.2010 subject to outcome of Writ Petition No.9764 of 2009. The petitioner also came to know that pursuant to the said order of the second respondent dated 7.5.2010, the third respondent passed order dated 12.5.2010 directing the fifth respondent to submit annual mining plan within a period of 3 months from the date of execution of renewal of lease deed. On 12.5.2010, the third respondent executed a Renewal Deed in favour of the fifth respondent in respect of the land covered under first lease. The petitioner contends that the proceedings of respondents 2 and 3 dated 7.5.2010 and 12.5.2010 respectively, and the Deed of Renewal of Quarry Lease executed by the third respondent are passed based on the memo of the first respondent dated 24.11.2008 and that in Writ Petition No.9764 of 2009, the very revision filed by the fifth respondent wherein the first respondent passed order dated 24.11.2008 was held to be misconceived and not maintainable as there was no impugned order, and that the material on record reveals that there is no mistake in the sketch appended to the original lease deed in respect of the area applied in favour of M/s. Blaze Granites Private Limited and the fifth respondent claiming to be transferee, cannot ask for alteration of the

sketch as it amounts to granting lease in respect of the area not applied for, and that quarry lease cannot be granted in favour of anybody without following the procedure contemplated under the Rules, 1966, and that if any lease is granted or attempt is made to alter the sketch, it can be declared as void. Hence, Writ Petition No.21217 of 2012 is filed.

4. The third respondent filed counter affidavit on his behalf and on behalf of respondents 1 and 2, admitting that M/s. Blaze Granite Private Limited filed applications for grant of first and second leases, and stated that the original lessee M/s. Blaze Granites Private Limited and the transferee i.e. fifth respondent, were quarrying mineral in so called dolerite dyke falling in modified sketch due to wrong demarcation of the area in the sketch at the time of original processing of lease to the original lessee, which was subsequently rectified by the Government exercising powers conferred under Rule 35A of the Rules, 1966. Dolerite dyke granite deposit was identified at the time of inspection and survey by the technical officers of the Department on the ground, and it is due to wrong demarcation of the area on the sketch appended to the lease deed at the time of processing of application, the Department proposed for errata to rectify the lease sketch as the field orientation of the granite deposit. Originally, two leases were granted in favour of M/s. Blaze Granites. M/s. Blaze Granites filed application for transfer of lease in favour of the fifth respondent. Accordingly, the second respondent accorded permission. Transfer lease deed was executed by proceedings No.1370/Q/2004, dated 15.01.2005 for the unexpired portion of the lease period. Subsequently, quarry lease sketch pertaining to the said quarry lease area was amended vide Government Memo dated 24.11.2008 and the lease was renewed for a further period of 20 years by the second respondent vide proceedings dated 07.05.2010, and a lease deed was executed vide proceedings No.11241/Q/2009, dated 12.05.2010. The second respondent had already rejected the quarry lease applications as there is no mineral bearing area. As per the order dated 25.4.2011 in Writ Petition No.9764 of 2009, the Government has to reopen and reconsider the entire issue pertaining to the claim of the fifth respondent for rectification of the sketch appended to the lease of the original grantee afresh. M/s. Karunamai Granites filed a revision application dated 24.5.2011 before the Government, and thereafter, sought permission to withdraw the revision as well as quarry lease

application dated 26.2.2007 and requested to dismiss the revision petition treating it as withdrawn and also permit the fifth respondent to continue the quarry on their leased area. The second respondent, by letter dated 31.10.2008, requested the Government to accord permission to make changes in the sketch appended to the lease deed, and the permission was granted by the first respondent by proceedings dated 24.11.2008. In the original lease deed granted to M/s. Blaze Granites, the area is plain paddy lands without any mineral deposit and no quarrying had taken place, and that the original lessee M/s. Blaze Granites and the transferee the fifth respondent worked away from the leased area where dolerite dyke is available and excavated granite blocks duly paying seigniorage fee to the government and the mistake in sketch was later modified by the Government duly on geological consideration. As per the inspection taken up by the Zonal Joint Director of Mines & Geology and the report submitted by the second respondent, the first respondent, exercising power under Rule 35A of the Rules, 1966 permitted to make changes in the sketch appended to the lease deed as per the field orientation of the granite deposit. The lessee filed revision before the Commissioner Land Records against the appeal orders of the District Collector, Warangal, wherein the District Collector directed the lessee to pay Rs.66.12 lakhs towards sale price for working outside the area, and the matter is still pending with the Commissioner of Land Records. Hence, it is prayed to dismiss the Writ Petition.

5. The fifth respondent filed counter affidavit stating as follows. There is no violation of fundamental or statutory right of the petitioner, and as such the Writ Petition is not maintainable. The petitioner filed Writ Petition No.34216 of 2011 challenging the order of the first respondent dated 09.11.2011 wherein the first respondent confirmed the order dated 24.11.2008. When the said Writ Petition was filed, the petitioner had an opportunity to challenge the order dated 07.05.2010 passed by the second respondent, which was passed based on the permission dated 24.11.2008 granted by the first respondent and the consequential order of renewal and execution of the sale deed dated 12.05.2010 executed by the third respondent. The impugned order in the present Writ Petition was admittedly passed prior to filing of Writ Petition No.34216 of 2011 and the said Writ Petition is between the same parties in respect of the same property and

issue. The cause of action for filing the present Writ Petition and the challenge to the impugned orders in the present Writ Petition also arose much prior to filing of Writ Petition No.34216 of 2011, and the petitioner failed to explain as to why he has chosen to file separate Writ Petitions by splitting up the causes of action. Having not challenged the impugned proceedings in the Writ Petition at the earliest point of time or at least when Writ Petition No.34216 of 2011 was filed, the petitioner cannot be permitted to come out with the present Writ Petition based on the very same facts. The procedure contemplated under Order II Rule 2 of the Code of Civil Procedure, 1908 (hereinafter referred to as 'CPC') applies to writ proceedings. The petitioner, if he is entitled to more than one relief in respect of a cause of action, he should have asked for all those reliefs in the same Writ Petition. In the case on hand, the petitioner distributed the causes of action and reliefs in two independent Writ Petitions. By repeatedly filing different Writ Petitions, this respondent is being subjected to harassment and the intention of the petitioner is to see that multiple and protracted litigation is created so that this respondent would accede to the illegal and unacceptable demands made by several other people like that of the petitioner. Hence, he prayed to dismiss the Writ Petition. WRIT PETITION No. 34216 of 2011:

6. This Writ Petition is filed to declare order dated 9.11.2011 in Memo No.6675/M-II(1)/2010-5 passed by the first respondent as illegal, arbitrary and without jurisdiction.

7. The pleadings in this Writ Petition are more or less the same as pleaded in Writ Petition No.21217 of 2012. Therefore, it is not necessary to reiterate the pleadings. WRIT PETITION No. 34372 of 2011:

8. This Writ Petition is filed to declare Memo No.14258/M.II (1)/ 2008-2, dated 24.11.2008 of the first respondent issued in favour of tenth respondent-M/s. Venkateswara Granites as illegal, arbitrary and violative of the provisions of the Act, 1957 and the Rules made thereunder and consequently set aside the same.

9. The averments, in brief, stated in the affidavit filed in support of the Writ Petition may be stated as follows. The petitioner made an application dated 25.9.2007 to the office of the fifth respondent for grant of quarry lease in respect of an extent of

3.00 hectares in survey no.225/120 to 127 of Errabelligudem Village, Nellikuduru Mandal, Warangal District duly enclosing required application fee and security deposit along with other requisite documents. The fifth respondent acknowledged receipt of the application and addressed a letter to the ninth respondent-Tahsildar, Nellikuduru to send a report regarding classification and availability of the land and no objection for grant of quarry lease in the said applied area. Thereafter, the petitioner was invited by the fifth respondent for inspection, survey and demarcation of the applied area on 4.3.2009. The petitioner is still under the bona fide impression that his application is still pending consideration with the fifth respondent, as rejection orders, if any, have not been supplied to him till today inspite of addressing letter to respondents 2 and 5 under the Right to Information Act, 2005. But, to the utter shock and surprise of the petitioner, he was recently given to understand that the tenth respondent-M/s. Venkateswara Granites made a representation to the first respondent for change of sketch and the same was acceded to, by the first respondent by Memo dated 24.11.2008. Challenging the same as illegal and arbitrary, the present Writ Petition is filed on the ground that the Act, 1957 and the Rules, 1966 expect the applicant to apply for an area in a proper manner and any deviation therefrom is not permitted; that the official respondents totally failed in their duty in implementing the provisions of the Act, 1957 and the Rules, 1966 and they have gone out of the way to accommodate the tenth respondent- M/s. Venkateswara Granites; that respondents 1 to 5 are aware of the fact that respondent no.10 was quarrying in double the area granted in its favour, and that the report of the Tahsildar would clearly go to show that respondent no.10 encroached into the tank bed area located outside the leased area; that the renewal of the quarry lease in favour of respondent no.10 is contrary to Rule 26 (4) of the Rules, 1966; that the first respondent failed to understand the judgment of this Court dated 25.4.2011 in Writ Petition No.9764 of 2009; that no orders of rejection of its quarry lease application made by the petitioner has been communicated to the petitioner till now, and any order, which is not communicated, is not an order in the eye of law. Hence, the Writ Petition.

10. The fifth respondent filed counter affidavit on his behalf and on behalf of respondents 1 to 4, stating as follows: On the application dated 25.9.2007 of the petitioner for grant of quarry lease for black granite over an extent of 3.00 hectares

in survey no.225/120 to 127 of Errabelligudem Village, technical staff inspected the subject area on 4.3.2009 in the presence of applicants and reported that there is no mineral bearing area/prospect after leaving the amended quarry lease areas of M/s. Venkateswara Granites. The second respondent rejected the petitioner's application vide proceedings No.12068/R6-1/09, dated 5.6.2009 on the ground that there is no mineral bearing area in the applied area. M/s. Karunamai Granites, who had filed a revision application on 24.5.2011, subsequently withdrew the revision. As the main revision petition is withdrawn, implead petition filed by the petitioner does not survive. Rejection of the applications of M/s. Karunamai Granites and the petitioner for quarry lease on the ground that there is no mineral bearing area in the applied areas, is correct. Hence, it is prayed to dismiss the Writ petition.

11. The tenth respondent filed counter affidavit stating as follows: The petitioner has not approached this Court with clean hands. When the application of the petitioner was rejected in the year 2009 itself, the petitioner kept quiet over these years and filed this Writ Petition. The petitioner failed to state as to what is the source and the date of knowledge of the impugned order. The Writ Petition is liable to be dismissed on the ground of delay and laches. The petitioner is aware of the fact that the competent authority executed lease deed in favour of this respondent on 12.05.2010 in respect of land admeasuring 0.496 hectares in survey no.225/120 and the application of the petitioner was rejected on 5.6.2009. There is no violation of fundamental or statutory right of the petitioner. The order of this Court in Writ Petition No.9764 of 2009 is no longer subsisting. Hence, it is prayed to dismiss the Writ Petition.

12. Writ Petition No.26910 of 2012 is filed by M/s. Venkateswara Granites to declare the action of the respondents in not issuing dispatch permits for the quarried material available in the area leased out to the petitioner and in not permitting the petitioner to conduct quarry operations in the land in survey no.225/120 and 264/1 of Errabelligudem Village, Nellikuduru Mandal, Warangal District as illegal and arbitrary.

13. Heard the counsel for all the parties in the Writ Petitions.

14. Unless specifically referred, the parties are hereinafter referred to, as they are arrayed in Writ Petition No.21217 of 2012. (I) . UNDISPUTED FACTS:- 15. (a) M/s. Blaze Granites Private Limited, Warangal applied for grant of quarry lease on 29.7.1989 in respect of land admeasuring 1.00 hectare in Survey No.225/120 situated at Yerraballigudem Village, Nellikuduru Mandal, Warangal District duly enclosing sketch of the quarry area. The second respondent by proceedings No.2918/Q1/89, dated 25.10.1989 granted first lease in respect of 0.496 hectares out of the applied area for a period of five years with effect from 22.1.1990. In pursuance of the same, the third respondent, vide order dated 22.1.1990, issued sanction order according permission to work over the said extent of land. The order inter alia states that the lessee should maintain all the records and accounts in the forms prescribed by the Government and submit quarterly returns in form-C, and that it should erect the boundary pillars on all sides to delineate the granted area. On the application of the original lessee, the lease was renewed for a period of 15 years with effect from 22.1.1995. (b) Similarly, M/s. Blaze Granites Private Limited applied for quarry lease in respect of land admeasuring Ac.0.90 cents in survey no.225/120 and land admeasuring Ac.0.35 cents in survey no.264/1, totally admeasuring Ac.1.25 cents, of the same village situated towards west of the area covered under the first lease. The second respondent, by order dated 15.6.1998, granted the second lease in respect of the said land for a period of 15 years. (c) M/s. Blaze Granites Private Limited made applications to the second respondent in respect of both the leases to transfer its quarry leases to the fifth respondent viz. M/s. Venkateswara Granites. Accordingly, the second respondent through separate proceedings dated 04.01.2005, accorded permission to M/s. Blaze Granite Private Limited to transfer both the leases in favour of the fifth respondent. In both the orders, it is specifically directed that the transfer lease deed shall be executed within 60 days from the date of the said orders, and the transferee i.e. fifth respondent, shall submit mining plan within 3 months from the date of the transfer deed execution. (d) There is a dispute with regard execution of transfer lease deed by M/s. Blaze Granites Private Limited in favour of the fifth respondent. According to the petitioner, there is no such transfer lease deed executed, but according the fifth respondent, a transfer lease deed was executed on 15.01.2005 vide proceedings No.1370/Q/2004. Admittedly, copy of the said transfer lease

deed has not been produced before this Court by the fifth respondent or the Government. (e) It is not in dispute that at the time of application by M/s. Blaze Granites Private limited, the applied area was surveyed and inspected by the third respondent. It is also not in dispute that M/s. Blaze Granites Private Limited, during the subsistence of its lease, dispatched total quantity of 305.16 M3 from both the quarry leases from 1998 to 2004. Thereafter, the third respondent received 6 quarry applications viz. from M/s. Karunamai Granites on 26.2.2007 in respect of 3.00 hectares of land in survey no.225/1; three applications from the fifth respondent i.e. application dated 2.3.2007 in respect of 1.00 hectare of land in survey nos. 225/120 and 264/1; application dated 28.4.2007 in respect of 1.00 hectate of land in survey no.225/120, and application dated 24.5.2007 in respect of 1.00 hectare of land in respect of 225/121 to 225/126; from M/s. Bhavani Granites on 30.7.2007 in respect of 3.00 hectares of land in survey nos. 225/120 to 225/127; and from M/s. Veerabhadra Granites (petitioner in Writ Petition No.34372 of 2011) on 25.9.2007 in respect of 3.00 hectares in survey nos. 225/120 to 225/127. In pursuance of the said applications, the concerned officials of Mines and Geology Department and Survey Officials prepared a combined sketch, according to which the leased areas of the fifth respondent is located at a distance of 180 meters from the north western boundary of the present working pit to the south eastern point of the executed sketch and 120 meters from the north eastern boundary of the present working area to the south eastern point of the executed sketch. As per the inspection report, the transfer lease area in favour of the fifth respondent as per the executed sketch is plain land with no mineral bearing and prospects and the leased area is covered with thick soil of 3 meters thickness and being cultivated by the farmers for paddy. Therefore, the third respondent requested the second respondent to take further necessary action as the executed area as per the sketch and the working area on the ground of the fifth respondent are falling apart and with respect to quarry lease applications filed thereon, and sought necessary instructions whether to give permits for dispatch of mineral from the working areas of the fifth respondent on both the leases, vide Lr. No.1319/Q/2007, dated 06.08.2008. Challenging the said proceedings of the third respondent, the fifth respondent filed a revision before the Government under Rule 35A of the Rules, 1966. (f) M/s. Karunamai Granites reported that the fifth

respondent was conducting quarrying operations in the area other than the granted area, and in response to the same, officials of the Mines and Geology Department conducted a joint survey in the presence of M/s. Karunamai Granites and the fifth respondent and found that the fifth respondent was conducting quarry operations on the southern point of the executed sketch. Similarly, Zonal Joint Director of Mines and Geology, Hyderabad- Respondent No.3 in WP No.34372 of 2011, inspected the area and came to the similar conclusion. He also found that the area under transferred lease is falling under agricultural patta lands of local scheduled tribes where no black granite is available and ultimately stated that there was a mistake cropped up at the time of processing the applications wrongly demarcating the area on the sketch away from the mineral deposit in the plain paddy lands. In pursuance of the same, the second respondent submitted to the Government to accord permission to make changes in the sketch appended to the lease deed. After hearing arguments, the Government, by exercising powers conferred under Rule 35A of the Rules, 1966, allowed the revision petition filed by the fifth respondent, vide Memo No.14258/M.II(1)/2008-2, dated 24.11.2008, according permission to make changes in the sketch appended to the lease deed in accordance with the demarcation made on the ground as per the field orientation of the granite deposit which was granted and transferred in favour of the fifth respondent in survey nos. 225/120 and 264/1 of Yerraballigudem Village, Nellikuduru Mandal, Warangal District. (g) Challenging the said Memo dated 24.11.2008, M/s. Karunamai Granites filed Writ Petition No.9764 of 2009 before this Court. This court vide order dated 25.4.2011, directed M/s. Karunamai Granites to file an appeal before the Government and reconsider the entire issue pertaining to the claim of the fifth respondent herein for rectification of the sketch appended to the lease of the original grantee afresh after giving opportunity to M/s. Karunamai Granites and the fifth respondent. In pursuance of the said order, M/s. Karunamai Granites filed appeal before the Government and on 9.11.2011, wherein interim order was passed on 12.9.2011 granting stay of operation of the order of the first respondent dated 24.11.2008. The fifth respondent filed Writ Petition No.26721 of 2011 on the ground that though M/s. Karunamai Granites filed a Memo seeking to withdraw the appeal, the said order was passed. The said Writ Petition was dismissed on 10.10.2011 with certain observations and

directions to the Government. Against the said order, the fifth respondent filed Writ Appeal No.828 of 2011, but in the said appeal, it sought permission to withdraw the Writ Petition itself. Accordingly, the Writ Appeal and the Writ Petition were dismissed as withdrawn. (h) M/s. Karunamai Granites had withdrawn the appeal, and therefore, the Government passed Memo No.6675/M.II(1)/2010-5, dated 9.11.2011 stating that as the main revision petition filed by M/s. Karunamai Granites is withdrawn, the order of the Government dated 24.11.2008 holds good. (i) Challenging the said order dated 9.11.2011, the petitioner filed Writ Petition No.34216 of 2011 on the ground that though the said Memo dated 24.11.2008 was held to be misconceived and not maintainable by this Court in Writ Petition No.9764 of 2009, it was held to be good and that no notice was given to the petitioner before passing the order dated 9.11.2011 though its application for grant of quarry lease is pending consideration. (j) While the revision was pending before the Government, M/s. Veerabhadra Granies (petitioner in WP No.34372 of 2011) filed implead petition, but it was dismissed as not maintainable as the cause in main revision itself does not survive. (k) During pendency of the Writ Petition, all the quarry lease applications, including the applications of the petitioner and M/s. Karunamai Granites, were rejected by the second respondent. According to M/s. Veerabhadra Granies (petitioner in WP No.34372 of 2011), no rejection orders were served on it and immediately on coming to know about the proceedings of the Government dated 24.11.2008, it filed Writ Petition 34372 of 2011. (l) The petitioner (Landmark Developers) filed quarry lease application on 24.6.2010 for grant of quarry lease in respect of land in respect of southern portion of land admeasuring 2.00 hectares in survey no.225/120 duly enclosing the sketch earmarking the area in respect of which the quarry lease application was submitted. As the third respondent has not taken any action in pursuance of the said application, challenging the inaction of the official respondents in processing the application the petitioner filed Writ Petition No. 28428 of 2011, which was disposed of by this court on 23.11.2011 directing the respondents therein to consider the application of the petitioner for grant of quarry lease and pass appropriate orders thereon in accordance with law. (m) Whereas, the fifth respondent-M/s. Venkateswara Granites, filed Writ Petition No.26910 of 2012 seeking to declare the action of the respondents therein in not issuing dispatch

permits for the quarried material available in the area leased out to it and in not permitting it to conduct quarry operations in the land in survey no.225/120 and 264/1 of Errabelligudem Village, Nellikuduru Mandal, Warangal District as illegal and arbitrary. (n) Though the counsel appearing for the contesting parties relied upon certain observations in the order of this Court dated 25.4.2011 in Writ Petition No.9764 of 2009, at the same time, any observation or finding of this Court in that order cannot be looked into or referred to, for the reason that in as per order dated 18.6.2012 in Writ Appeal No.138 of 2012, the said Writ Petition was withdrawn and consequently there is no order dated 25.5.2011 in Writ Petition No.9764 of 2009 in the eye of law. Basing on the pleadings and the documents available on record, the issues involved in these Writ Petitions have to be decided independently. II) VALIDITY OF THE PROCEEDINGS DATED 24 11.2008 IN MEMO No.14258/M.II (1)/2008-2 PASSED BY THE FIRST RESPONDENT :

16. On this aspect, learned counsel for the petitioner contended that the transferee lease holder cannot claim better rights than M/s. Blaze Granites, who is the original lessee; that the order of the Government dated 24.11.2008 does not contain any reasons; that in the revision application, the Government ought not to have permitted the second respondent to make changes in the sketch appended to the lease deed, and therefore, the said order is liable to be set aside.

17. On the other hand, learned counsel appearing for the fifth respondent contended that the petitioner has no locus standi to challenge the said order, as, by the date of passing of the said order dated 24.11.2008, it has not even filed its application for grant of quarry lease, and hence, he prays to dismiss the Writ Petition Nos. 21217 of 2012, 34216 of 2011 and 34372 of 2011.

18. The impugned order in Memo No.14258/M.II (1)/2008-2, dated 24.11.2008 is passed by the first respondent exercising the revisional power under Rule 35A of the Rules, 1966. Rule 35A of the Rules, 1966 reads thus: "Revision:- The Government may either suo motu at any time or on an application made within ninety days, call for and examine the record relating to any order passed or proceeding taken by the Director, Deputy Director or Assistant Director under these rules for the purpose of satisfying themselves as to the legality or propriety

of such order or as to the regularity of such proceedings and pass such other order in reference thereto as they think fit." On the application made by M/s. Karunamai Granites, the Government has got every power to exercise its revisional jurisdiction in order to satisfy as to the legality, propriety of such order or as to the regularity of the proceedings.

19. Primary meaning of 'legality' is that everything must be done according to law. Every act of the governmental power i.e. every act which affects legal rights, must be shown to have strictly authorized by law. Therefore, the principle of legality is a clear cut concept. 'Regularity' means the state or character of being confirmable to Rule or with due regard to procedure. In other words, it must be shown that the order, on the face of it, is regular and is in conformity with the provisions of the statute. 'Propriety' means conformity with requirement of rule or principle. In other words, the state or quality of conforming to conventionally accepted standards of behaviour or morals. The object of the power under Rule 35A of the Rules, 1966 is to set right patent defect or error. Therefore, the power of Government of Andhra Pradesh under Rule 35A of the Rules is an adjudicatory function. On this aspect, it is pertinent to refer to a decision in P.Rama Rao & another v. Union of India , wherein it is held thus: "The Rules of executive business have chosen the Constitutional functionary i.e. the Minister in-charge of the Department as the person who shall exercise the power of the Government. While exercising the power under Rule 35-A, the Minister shall not exercise any executive power but a statutory power only under the Rules framed by the State Government under Section 15 of the Act and since it involves adjudication, the function is quasi judicial." 20. It is now well settled law that where an authority makes any order in exercise of Quasi-judicial function, it must record its reasons in support of the order it makes. Every Quasi-judicial order must be supported by reasons. It is an administrative function which the law requires to be exercised in some respects as if it were judiciary. The condition to give reasons is imperative which shows that the authority acted fairly or at any rate condenses arbitrariness. When a judicial power is exercised by an authority, normally performing executive or administrative functions, it is imperative that the decision has been reached after due consideration on merits of the dispute uninfluenced by extraneous considerations and policy of expediency. While exercising the Quasi-judicial

power, the Government cannot make out a third case which is not an issue before a primary authority. It can allow the revision petition or dismiss the same by giving reasons though not elaborately.

21. In the case on hand, while allowing the revision application, the Government further accorded permission to make changes in the sketch appended to the lease deed as per the demarcation made on the ground as per the field orientation of the granite deposit, which was transferred and executed in favour of the fifth respondent. The said act is beyond the scope of Rule 35A of the Rules, 1966. Whether such a permission can be accorded exercising the powers under Rule 35A of the Rules, 1966, which is not subject matter in revision. In the opinion of this Court, it cannot. The issue of amendment of sketch appended to the lease deed is not the subject matter of dispute in any of the proceedings of the third respondent-Assistant Director of Mines and Geology. This is totally unsatisfactory method of disposal of a case in exercise of Quasi-judicial power vested with the State Government. It gives raise to draw inference that the State Government passed such an order for extraneous considerations.

22. Learned counsel for the petitioner vehemently contended that case of the fifth respondent falls under Section 19 of the Act, 1957 and therefore, it is void. On the other hand, it is the contention of the learned counsel appearing for the fifth respondent that the petitioner cannot challenge the order which was passed long prior to the application made by it.

23. The Act, 1957 is an Act to provide for regulation of mines and development of minerals under the control of the Union. Section 4 of the Act lays down that no person shall undertake any reconnaissance, prospecting or mining operations in any area, except under and in accordance with the terms and conditions of reconnaissance permit or of a prospecting licence or as the case may be, a mining lease, granted under this Act and the rules made thereunder. Section 5 of the Act lays down the restrictions on the grant of reconnaissance permits or prospecting licences or mining leases. Section 6 of the Act lays down the maximum area for which a reconnaissance permit or a prospecting licence or mining lease may be granted. Section 7 of the Act lays down the periods for which the prospecting

licence may be granted or renewed. Section 8 of the Act lays down the periods for which mining leases may be granted or renewed. Section 10 of the Act lays down the procedure for applying for prospecting licences or mining leases. Section 11 of the Act lays down the preferential rights of certain persons to the grant of prospecting licences or mining leases. Section 13 of the Act deals with the power of the Central Government to make rules for regulating grant of prospecting licences or mining leases. Section 19 of the Act lays down that any 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 no effect. Section 21 of the Act lays down the penal consequences.

24. Under Section 15 (1) of the Act, 1957, the State Government may, by Notification in the Official Gazette, makes rules for regulating the grant of quarry leases, mining leases or other mineral concessions in respect minor minerals and for purposes connected therewith. In pursuance thereof, the Andhra Pradesh Minor Mineral Concession Rules, 1966 came into existence with effect from 7.12.1967 for the purpose of regulating grant of mineral concessions in respect of minor minerals in the State of Andhra Pradesh. Rule 5 of the Rules, 1966 provides that no person shall undertake quarrying of any minor mineral in any area, except under and in accordance with the terms and conditions of a quarry lease or a permit granted under these rules. Rule 7 of the Rules provides that when a quarry lease is granted over any area, arrangement shall be made by the Assistant Director at the expense of the lessees for the preparation of a plan and the demarcation of the area granted under the lease, after collecting a fee calculated according to the rates specified in the Rules. Rule 8 of the Rules provides that the lease deed shall be executed in Form 'G'. Rule 9 of the Rules provides for making an application to the Assistant Director of Mines and Geology in Form-B. Under Rule 12 (5) (a) of the Rules, quarry lease for granite useful for cutting and polishing shall be granted by the Director on application made to him in form B-I subject to the provisions of Clause (b). Sub-clause (viii) of Clause (f) of Rule 12 (5) of the Rules, 1966 lays down that the lessee shall erect and maintain at his own expense, boundary pillars of substantial material, standing not less than one meter above the surface of the ground at each corner or angle in the line of the boundary of the area under lease or permit and at intervals of not more than 183 meters

along with the boundary, delineated in the plan attached to the area under lease or permit.

25. The Act, 1957 and the Rules, 1966, thus, contain complete code by itself, in respect of grant and renewal of prospecting licences or mining leases in the lands belonging to the Government as well as the lands belonging to private persons. From the above provisions, it is clear that the area of mining must be specific with boundaries, and a plan has to be attached describing the schedule delineated in the map or plan. No one can do mining operations in the area other than the place where the mining lease was granted.

26. In the case on hand, the original lessee M/s. Blaze Granites was granted two leases with specific boundaries and survey numbers. A specific plan was also attached to the lease deeds. Therefore, the original lessee can only do quarrying operations within the boundaries as mentioned in its application and as approved by the second respondent and also in accordance with the approved plan. M/s. Blaze Granites instead of doing quarry of mining mineral within the specified area as per the lease deed and as per the approval, was conducting mining operations on the southern side of the leased area i.e. the area other than leased area. This aspect of the case is not in dispute before this Court. The officials concerned did not care to verify the same when M/s.Blaze Granites was conducting illegal quarrying operations in the land other than the leased out area. The fifth respondent, which stepped into the shoes of M/s. Blaze Granites, cannot derive any better rights than those of M/s.Blaze Granites is having. From the material on record and as per the physical verification by officials of the Mines and Geology Department, the Survey and Land Records and the fourth respondent-Tahsildar, the fifth respondent was quarrying black granite at a different place in the same survey number but not as per the sketch and not within the boundaries as approved by the competent authority. The said aspect was confirmed by the Zonal Joint Director of Mines and Geology, Hyderabad (third respondent in WP No.34372 of 2011) as true and correct. From the various proceedings of the Government, which are not in dispute, it is clear that the fifth respondent was conducting quarrying operations on the area other than the area on which the transfer of lease was granted. The said act of the fifth respondent is totally illegal.

The fifth respondent has no authority to do illegal quarrying of minor mineral, except in accordance with the area which was in accordance with transfer lease deed. This transfer lease deed must be in accordance with law. If there is no valid transfer lease deed, the fifth respondent cannot do any mining activities. The fifth respondent claims a right to do quarrying operations as per transfer lease deed. If the transfer lease deed cannot be looked into, the fifth respondent has no authority of whatsoever to do quarrying operations.

27. The third respondent filed counter affidavit stating that the Government exercising power under Rule 35A of the Rules, 1966, passed the order dated 24.11.2008. The letter of the third respondent dated 6.8.2008 in Lr. No.1319/Q/2007 is under challenge in the revision. This proceeding is only seeking clarification from the higher official. Under Rule 35A of the Rules, 1966, the Government can only examine validity or otherwise of the letter of the third respondent dated 6.8.2008. On this aspect, learned counsel for the petitioner placed strong reliance on a decision in Commissioner of Income Tax, Mumbai v. Anjum M.H.Ghaswala & others , wherein it is held thus: "It is a normal rule of construction that when a statute vests certain power in an authority to be exercised in a particular manner, then the said authority has to exercise it only in the manner provided in the statute itself." Therefore, the Memo No.14258/M.II (1)/2008-2, dated 24.11.2008 passed by the first respondent contravenes Section 4 of the Act, 1957 and Rules 5, 7, 8 and 9 of the Rules, 1966 and contrary to the lease deed, and consequently, the mining lease or renewal in contravention of the provisions of the Act, 1957 and the Rules, 1966 made thereunder shall be void and of no effect as per Section 19 of the Act, 1957. When the Memo No.14258/M.II (1)/2008-2, dated 24.11.2008 passed by the first respondent is void, it cannot be revived through Memo No.6675/M-II(1)/2010-5, dated 9.11.2011 whereunder it is held that the order passed by the Government dated 24.11.2008 holds good. Therefore, both the orders viz. Memo No.14258/M.II (1)/2008-2, dated 24.11.2008 and Memo No.6675/M-II(1)/2010-5, dated 9.11.2011 passed by the first respondent are liable to be set aside. (III)WHEN CAN MANDAMUS BE ISSUED AND LOCUS STANDI :- 28. It is the contention of the learned counsel for the fifth respondent that the petitioner, who filed application for grant of mining lease on 24.6.2010, has no right to challenge the Memo No.14258/M.II (1)/2008-2,

dated 24.11.2008 as it has no subsisting legal right as on the date of the application, and hence, writ of mandamus cannot be issued.

29. The petitioner is seeking a mandamus. A writ or in the nature of mandamus, it is trite, is ordinarily issued where the petitioner establishes a legal right in itself and a corresponding legal duty in the public authority. It is elementary that no one can ask for a mandamus without a legal right. There must be a judicially enforceable right as well as legally protected right before one suffering a legal grievance can ask for a mandamus. A person can be said to be aggrieved, only when the person is denied a legal right by someone, who has legal duty to do something or to abstain from doing something. The object of Mandamus being simply to compel performance of a legal duty on the part of some person or a body, who is entrusted by law with that duty, the Court, in a proceedings of Mandamus, will never sit as a court of appeal so as to examine the facts or to substitute its own wisdom for the description vested by law in the person or body against whom the writ is sought.

30. No doubt, by the date of passing of the Memo No.14258/M.II (1)/2008-2, dated 24.11.2008 by the first respondent, application of the petitioner for grant of quarry lease was not pending. But, the application of M/s. Veerabhadra Granites (petitioner in WP No.34372 of 2011) was admittedly pending as it filed application for grant of quarry lease on 25.9.2007 in respect of 3.00 hectares of land in Survey Nos. 225/120 to 225/127 of Yerraballigudem Village, Nellikuduru Mandal, Warangal District. The Act, 1957 and the Rules, 1966 are intended to regulate development of mining minerals under the control of the Union and contain provisions necessary for that purpose. No person can claim any right in any land belonging to the Government except under and in accordance with the Act, 1957 and the Rules, 1966.

31. On this aspect, learned counsel for the fifth respondent relied on a decision in State of Tamil Nadu v. Hind Stone & Ors., wherein it is held thus: "No one has a vested right to the grant or renewal of a lease and none can claim a vested right to have an application for the grant or renewal of a lease dealt with in a particular way, by applying particular provisions. In the absence of any vested rights in

anyone, an application for a lease has necessarily to be dealt with according to the rules in force on the date of the disposal of the application despite the fact that there is a long delay since the making of the application." On the other hand, learned counsel for the petitioner relied on a decision in Ghulam Qadir v. Special Tribunal and others, wherein it is held thus: (para 38) "There is no dispute regarding the legal proposition that the rights under Article 226 of the Constitution of India can be enforced only by an aggrieved person except in the case where the writ prayed is for habeas corpus or quo warranto. Another exception in the general rule is the filing of a writ petition in public interest. The existence of the legal right of the petitioner which is alleged to have been violated is the foundation for invoking the jurisdiction of the High Court under the aforesaid Article. The orthodox rule of interpretation regarding the locus standi of a person to reach the court has undergone a sea- change with the development of constitutional law in our country and the constitutional courts have been adopting a liberal approach in dealing with the cases or dis-lodging the claim of a litigant merely on hyper-technical grounds. If a person approaching the court can satisfy that the impugned action is likely to adversely affect his right which is shown to be having source in some statutory provision, the petition filed by such a person cannot be rejected on the ground of his having not the locus standi. In other words, if the person is found to be not merely a stranger having no right whatsoever to any post or property, he cannot be non-suited on the ground of his not having the locus standi." Even assuming for a moment that the petitioner has no vested right for grant of a lease, but, at the same time, it has got a right to ask the authorities concerned to consider its application in accordance with law if it shows that there is no valid transfer lease in favour of the fifth respondent. Further more, even though the application of the petitioner was not pending as on the date of the passing of the order dated 24.11.2008 by the first respondent, still, it can contend that the order of the Government is void and therefore, its application can be considered in accordance with law. Similarly, M/s. Veerabhadra Granites (petitioner in WP No.34372 of 2011) has got every right to challenge the order dated 24.11.2008 as its application dated 25.9.2007 for grant of quarry lease was pending by the date of passing of the said order. Therefore, the contention of the learned counsel for the fifth respondent that there is no infringement of legal right of the petitioner and M/s.

Veerabhadra Granites (petitioner in WP No.34372 of 2011) cannot be accepted. (IV) CONSENSUS AD IDEM :

32. To make a contract binding, the consent must be in idem, for, if there be any error or mistake in regard to this, the result is that there is no contract. Therefore, it is the essence of a contract that there should be concurrence of intention between the parties as to the terms. It is an agreement because the parties agree upon the terms, upon the subject matter, the consideration and the promise. Section 20 of the Indian Contract Act, 1872 states that where both the parties to an agreement are under a mistake as to a matter of fact essential to the agreement, the agreement is void. The mistake described in this section operates invalidity of a contract because the true intention of the parties to make their agreement conditional on the existence of some set of facts turns out not to have existed at the date of the agreement.

33. The fact essential to the agreement in this case is the area of the land under which a mining lease was granted originally to M/s. Blaze Granites. But, M/s. Blaze Granites was doing quarry of black granite in an area different from the area granted lease to it, from the date of the grant till the date of transfer to the fifth respondent, rendering the whole contract void or inoperative. It is the contention of the learned counsel for the fifth respondent that it is purely a mistake and it can be rectified at any point of time. But, the rule of mistake as invalidating the contract, is confined within the very narrow limit where extreme injustice of holding one party to the contract outweighs the general principle that apparent contract should be enforced. When mutual mistake occurs, where the parties misunderstand each other and are at cross-purposes, there is no real corresponding offer and acceptance. In this regard, learned counsel for the petitioner relied on a decision in Tarsem Singh v. Sukhminder Singh , wherein it is held thus: (para 21) "This Section provides that an agreement would be void if both the parties to the agreement were under a mistake as to a matter of fact essential to the agreement. The mistake has to be mutual and in order that the agreement be treated as void, both the parties must be shown to be suffering from mistake of fact. Unilateral mistake is outside the scope of this Section." From the above decision, it is clear that when the parties suffered from mutual mistake with regard to the area, which

is essential to the agreement, it can be treated as void as both the parties were suffering from mistake of fact. Therefore, the parties are not really consensus ad idem with regard to essential agreement and there is, thus, no agreement at all and this contract is void. (V) EFFECT OF NON-REGISTRATION OF THE TRANSFER LEASE DEED PROCEEDINGS No.1370/Q/2004, DATED 15 01.2005 34. A specific plea has been taken by the learned counsel for the petitioner-Landmark Developers that in pursuance of the approval by the second respondent for transfer of the leases in favour of the fifth respondent, through proceedings dated 04.01.2005, M/s. Blaze Granites has not executed any valid transfer lease deed in favour of the fifth respondent. But, according to the fifth respondent and the counter affidavit of the official Respondent no.3, transfer lease deed was executed in between M/s. Blaze Granites and the fifth respondent.

35. 'Transfer of property' as defined under Section 5 of the Transfer of Property Act, 1882 means an act by which a living person conveys property, in the present or in future, to one or more other living persons, or to himself and one or more other living persons; and to transfer property is to perform such act. In its general sense, the expression 'transfer of property' connotes passing of the rights in the property from one person to another. The expression 'transfer' in Section 5 of the Act connotes creation of some interest in immovable property. It is not in dispute before this Court that quarry lease is a 'lease' within the meaning of 'transfer of property'. For that purpose, learned counsel for the petitioner relied on a decision in Shri Tarakeshwar Sio Thakur Jiu v. Bar Dass Dey and Co. & others , wherein it is held that every interest in immovable property or a benefit arising out of the land will be immovable property for the purpose of Section 105 of the Transfer of Property Act, 1882.

36. In the case on hand, no registered transfer lease deed is executed by M/s. Blaze Granites in favour of the fifth respondent in respect of both the leases. The alleged transfer lease deed executed by M/s.Blaze Granites in favour of the fifth respondent is for a term of five years i.e. unexpired portion of original lease. It is not the case of the fifth respondent or the Government of Andhra Pradesh that the transfer lease deed is registered. Even the Government did not specifically plead that there was a registered transfer lease. Even assuming for a moment that there

was a transfer lease deed, such unregistered transfer lease deed cannot be relied upon to claim right or enforce any right under or in respect of such lease.

37. It is the contention of the learned counsel appearing for the fifth respondent that though the lease deed is compulsorily registerable document under Section 17 of the Registration Act, 1908, still it can be relied upon for collateral purpose as required under Section 49 of the said Act. Section 17 (1) (d) of the Registration Act, 1908 as substituted by the Andhra Pradesh Act 4 of 1999, came into force with effect from 1.4.1999 provides that lease of an immovable property can be made only by a registered instrument. Section 49 of the Act sets out the effect of non-registration of the document required to be registered. The said provision is as follows: "Effect of non-registration of documents required to be registered:- No document required by Section17 or by any provisions of the Transfer of Property Act, 1882 to be registered shall- (a) affect any immovable property comprised therein, or (b) confer any power to adopt; or (c) be received as evidence or any transaction affecting such property or conferring such power, unless it has been registered. Provided that an unregistered document affecting immovable property and required by this Act, or the Transfer of Property Act, 1882 to be registered may be received as evidence of a contract in a suit for specific performance under Chapter II of the Specific Relief Act, 1877, or as evidence of any collateral transaction not required to be executed by registered document." From the above provision, it is clear that a document which is compulsorily registerable, if not registered, will not affect the immovable property comprised therein in any manner. But, it can be received as evidence under two circumstances viz. (1) in a suit for specific performance; (2) in collateral transaction which is incidentally connected with the transaction affecting the immovable property.

38. Section 35 of the Indian Stamp Act, 1899 reads thus: "Instruments not duly stamped inadmissible in evidence, etc.: No Instrument chargeable with duty shall be admitted in evidence for any purpose by any person having by law or consent of parties authority to receive evidence, or shall be acted upon, registered or authenticated by any such person or by any public officer, unless such instrument is duly stamped." From the above provision, it is clear that an instrument which is not duly stamped is inadmissible in evidence and cannot be acted upon or used

for any purpose. Section 35 of the Indian Stamp Act, 1899 does not contain any proviso similar to proviso in Section 49 of the Registration Act, 1908 enabling the instrument to be used as evidence of any collateral purpose.

39. Essentially, under Public Law, if there is a dispute between a citizen, on one hand, and State or instrumentality of State or other public body, on the other, it has to be resolved. This is done to maintain the Rule of law and to prevent the State from acting in an arbitrary manner. Even in case of Public Law domain, inadmissible evidence cannot be looked into or referred to, as the legal right of an individual may be founded upon a contract or a statute or an instrument having force of law.

40. When the fifth respondent did not produce the alleged transfer lease deed dated 15.1.2005 executed in proceedings No.1370/Q/2004, an adverse inference has to be drawn that there is no such registered transfer lease deed or a transfer lease deed. If a party in possession of the best evidence, which would throw a light in controversy, withholds it, the court can draw an adverse inference against him notwithstanding that fact that the onus of proof does not lie on him. The fifth respondent or the Government must be in possession of transfer lease deed. Still, they did not produce it before this Court. Such is the case, the fifth respondent was conducting quarry operations in the area illegally though there is no registered transfer lease deed in its favour. This aspect of the case has been completely overlooked by the Mines and Geology Department officials and also the Government of Andhra Pradesh. The officials of Mines and Geology Department ought not to have permitted the fifth respondent to conduct quarrying operations at any place other than the area for which permission was granted to original lessee. This patent defect has not been noticed by anyone of the officials concerned or the Government. The reasons are obvious. Consequently, there was total non-application of mind by the officials of the Mines and Geology Department as well as the Government of Andhra Pradesh in passing the orders in favour of the fifth respondent, and the said illegality cannot be allowed to perpetuate.

41. Learned counsel for the petitioner relied on a decision in Anthony v. K.C. Ittoop & Sons & others, wherein it is held thus: (para 16) "Taking a different view would

be contrary to the reality when parties clearly intended to create a lease though the document which they executed had not gone into the processes of registration. That lacuna had affected the validity of the document, but what had happened between the parties in respect of the property became a reality. Non-registration of the document had caused only two consequenes. One is that no lease exceeding one year was created. Second is that the instrument became useless so far as creation of the lease is concerned. Nonetheless the presumption that a lease not exceeding one year stood created by conduct of parties remains unrebutted." Even if a lease is less than one year, it requires registration in the State of Andhra Pradesh. In view of the above decision, the transfer lease deed is useless insofar as creation of transfer is concerned. The transfer lease deeds executed in favour of the fifth respondent by M/s. Blaze Granites cannot be used for any other purpose.

42. It is surprising to note that the officials of the Mines and Geology Department and the Government, for the reasons best known to them, did not direct the fifth respondent to produce registered transfer lease deed though it is specifically directed in the proceedings No.11467/R2-2/2004 and 11453/R2-2/2004, both dated 4.1.2005 passed by the second respondent that the transfer lease deed shall be executed within 60 days from the date of the said orders it is specifically directed that the transfer lease deed shall be executed within 60 days from the date of the said orders, and to submit mining plan within 3 months from the date of the transfer deed execution. No action has been initiated for not filing the registered transfer lease deed. In the absence of any registered transfer lease deed, the fifth respondent has no right of whatsoever to conduct the quarry operations at any place in any area in pursuance of unregistered transfer lease deed. For the reasons stated above, the order dated 24.11.2008 in Memo No.14258/M.II (1)/2008-2 and order dated 9.11.2011 in Memo No.6675/M-II(1)/2010-5 passed by the first respondent, and the subsequent consequential proceedings for renewal of leases in favour of the fifth respondent are illegal and void ab initio. (VI) POWER OF THE GOVERNMENT TO CHANGE SKETCH APPENDED TO THE ORIGINAL LEASE DEED :- 43. Learned counsel for the petitioner contended that the Government has the option either to affirm the proceedings of the third respondent or set aside the same in case it is grossly

erroneous, and therefore, the sketch cannot be amended by the first respondent. On the other hand, the learned senior counsel for the fifth respondent justified the proceedings in view of Section 15 of the Andhra Pradesh General Clauses Act, 1891 (for brevity, 'the AP Act') and Section 21 of the General Clauses Act, 1887 (for short, 'the Central Act'). Section 21 of the Act inter alia deals with power to add to, amend, vary or rescind notifications, orders, rules or bye-laws. It embodies the rule of construction. Nature and extent of its application must be governed by the relevant statute to issue notification, orders, rules or bye-laws. Section 15 of the AP Act is almost in para-materia with Section 21 of the Central Act. The implied power of amendment in Section 15 of the AP Act must be determined with reference to context and subject matter of the provisions of the principal statute. But, the application of Section 21 of the Central Act or Section 15 of the AP Act has to be either executive or legislative in nature. The order which the Government is required to pass under Rule 35A of the Rules, 1966 is neither legislative nor executive order, but it is a Quasi- judicial order. In such a case, exercising the Quasi-judicial power, the Government has no power to amend the sketch in view of the fact that an administrative decision is revocable while Quasi-judicial decision is not revocable except in certain circumstances. Therefore, the contention of the learned senior counsel appearing for the fifth respondent that by invoking Section 15 of the AP Act, or Section 21 of the Central Act, the State Government has power to amend the sketch is devoid merit and untenable because the Government is exercising the power under Rule 35A of the Rules,1966, which is a Quasi-judicial function. (VII) DELAY & LACHES:

44. One of the grounds of refusing the relief under Article 226 of the Constitution of India is that the petitioner is guilty of delay and laches. It is imperative that if the petitioner wants to invoke the extraordinary remedy under Article 226 of the Constitution of India, he should come to the Court at the reasonable possible opportunity. It is essential that the persons who are aggrieved by any order of the Government or any Executive action can approach this Court with utmost expediency. In deciding the question of delay in filing the Writ Petition, the Court has to consider the relevant circumstances including conduct of the parties, change in the circumstances, prejudice that is likely to be caused to the opposite party or whether it leads to public inconvenience or interferes with the rights of

others.

45. The petitioner made application on 24.06.2010 for grant of quarry lease in respect of land admeasuring 2.00 hectares in survey no.225/120 of Yerraballigudem Village, Nellikuduru Mandal, Warangal District. Similarly, M/s. Veerabhadra Granites (petitioner in Writ Petition No.34372 of 2011) made application for quarry lease on 25.9.2007 in respect of 3.00 hectares in survey nos. 225/120 to 225/127. The first lease in respect of 0.496 hectares was originally granted in the year 1990 for a period of five years i.e. from 23.1.1990 to 22.1.1995 in favour of M/s. Blaze Granites. The said lease was extended for another 15 years from 23.1.1995 to 22.1.2010. Mean while, the fifth respondent obtained transfer of the lease as per order of the second respondent dated 04.01.2005. As several applications were received from various persons while the lease was subsisting, the third respondent sought instructions from the second respondent vide letter dated 06.08.2008. Challenging the same, the fifth respondent filed revision before the Government under Rule 35A of the Rules, 1966. As clarification was sought by the third respondent, the second respondent has to take appropriate decision in accordance with law though a revision is filed before the Government, as order dated 24.11.2008 in Memo No.14258/M.II (1)/2008-2 passed by the first respondent is held to be illegal.

46. Learned counsel for the petitioner contended that when an order is void, it gives continuous or recurring cause of action, and hence, the Writ Petitions filed by it is maintainable. He further contended that a show-cause notice dated 21.1.2012 was issued by the second respondent to the petitioner to show cause as to why the quarry lease application dated 24.6.2010 of the petitioner should not be rejected, and immediately thereafter, the present Writ Petition is filed and hence, there is no delay or laches on the part of the petitioner in approaching the court.

47. Insofar as Writ Petition No.34372 of 2011 is concerned, the petitioner therein made application in the year 2007 for grant of quarry lease, but no action is being taken by the Government thereon. Though it is stated that the application of M/s. Veerabhadra Granites, petitioner in Writ Petition No.34372 of 2011, dated

25.9.2007 was rejected by virtue of the proceedings dated 05.06.2009 of the second respondent, a specific plea has been taken by M/s. Veerabhadra Granites that the order dated 05.06.2009 was not served on it till today, and therefore, on coming to know about the same, it filed the Writ Petition No.34372 of 2011. When a specific plea has been taken by M/s. Veerabhadra Granites that the order dated 05.06.2009 has not been served on it, the same has not been denied or disputed by the third respondent in his counter affidavit, and therefore, it can be said to be admitted. No proof is filed to show that the rejection order dated 05.06.2009 was communicated and the same has been received by, M/s. Veerabhadra Granites. It is also stated by M/s. Veerabhadra Granites that it addressed two letters under the Right to Information Act, 2005 to respondents 2 and 3 (viz. the Director of Mines & Geology, Hyderabad and the Assistant Director of Mines and Geology, Hanamkonda, Warangal District) to supply copy of the order, but, still, no order has been served on it. Therefore, in view of the facts and circumstances of the case, the Writ Petitions are not liable to be dismissed on the ground of delay and laches. (VIII) APPLICATION OF ORDER II RULE 2 CPC:

48. Learned senior counsel appearing for the fifth respondent contended that the relief sought for in Writ Petition No.21217 of 2012 is hit by Order II Rule 2 CPC as the relief sought in the Writ Petition was available to the petitioner therein as on the date of filing of the earlier Writ Petition No.32416 of 2011 in respect of the same cause of action.

49. Learned counsel for the petitioner in WP No.21217 of 2012 placed reliance on a decision in M/s. Bengal Waterproof Ltd. v. M/s. Bombay Waterproof Manufacturing Company & another , wherein it is held thus: "In cases of continuous causes of action or recurring causes of action bar of O.2 R.2, sub-rule (3) cannot be invoked. In this connection, it is profitable to have a look at S.22 of the Limitation Act, 1963. It lays down that 'in the case of a continuous breach of contract or in the case of a continuing tort, a fresh period of limitation begins to run at every moment of the time during which the breach or the tort, as the case may be, continues." 50. Under Order II Rule 2 (3) CPC, a person entitled to more than one relief in respect of the same cause of action may sue for all or any of such reliefs; but if he omits, except with the leave of the Court, to sue for all such reliefs,

he shall not afterwards sue for any relief so omitted. Provisions of Order II Rule 2 CPC are based on the cardinal principle of law that no defendant should be vexed twice for one and the same cause of action. It is not in dispute before this Court that provisions of Order II Rule 2 CPC equally apply to writ proceedings. It is the contention of the learned senior counsel appearing for the fifth respondent that as no leave is obtained, the petitioner in Writ Petition No.21217 of 2012 cannot sue for the relief omitted by him in the earlier Writ Petition. As already held, the alleged transfer lease deed in favour of the fifth respondent is void and the order dated 24.11.2008 in Memo No.14258/M.II (1)/2008-2 passed by the first respondent is illegal. Illegality of an order can be challenged or shown in a collateral proceedings. The word 'void' conveys the idea that the order or the proceedings is invalid or illegal. A void act or transaction can be disregarded even in collateral proceedings. For avoiding a void act or transaction, no declaration is necessary as the law does not take notice of the same. A void agreement is defined under Section 2 (g) of the Indian Contract Act, 1872 according to which an agreement not enforceable by law is said to be void. In other words, 'void' means that an instrument or transaction is so nugatory and ineffectual that a nothing can cure it. In this case, the proceedings of the Government dated 24.11.2008 are found to be void.

51. On this aspect, learned counsel for the petitioner relied on a decision in Sushil Kumar Mehta v. Gobind Ram Bohra (dead) through his LRs. , wherein it is held thus: "A decree passed by such a court is nullity and non est. Its invalidity can be set up whenever it is sought to be enforced or is acted upon as a foundation for a right, even at the stage of execution or in collateral proceedings." In the same analogy, order dated 24.11.2008 in Memo No.14258/M.II (1)/2008-2 passed by the first respondent is void and also the transfer lease deed executed by M/s. Blaze Granites in favour of the fifth respondent is illegal and unlawful and cannot be enforced for lack of registration. Therefore, the contention of learned senior counsel appearing for the fifth respondent that Writ Petition No.21217 of 2012 is hit by Order II Rule 2 CPC is not tenable.

52. It is one of the contentions raised by the learned senior counsel appearing for the fifth respondent that renewal of mining lease amounts to fresh grant and

therefore the fifth respondent got a right to quarry till 21.1.2030. Learned senior counsel placed relied on a decision of Patna High Court in Nirmal Kumar Pradeep Kumar v. State of Bihar and others, wherein it is held thus: (para 15) "A Division Bench of this Court of which one of us, S.B.Sinha, J., was a member, in Kamaljit Singh Ahluwalia v. Union of India (UOI) 1992 BBCJ, 215, upon consideration of the aforementioned decision as also the decisions of this Court, held as follows: Renewal of a mining lease amounts to a fresh grant. In such a situation, the prior approval of the Central Government in terms of Forest (Conservation) Act, 1980 is required to be obtained by State Government even before an order on the application of mining lease filed by the petitioner can be passed by it." The above decision has no application to the facts of the present case, because, in the context of grant of mining lease within the reserved forest area, prior approval of Central Government is necessary in case of renewal as it amounts to fresh lease. In this case, the renewal by order dated 12.05.2010 in Proceedings No.11241/Q/2009 passed by the third respondent is based upon the orders dated 24.11.2008 in Memo No.14258/M.II(1)/2008-2 and dated 09.11.2011 in Memo No.6675/M.II (1)/2010-5, passed by the first respondent. The order dated 24.11.2008 in Memo No.14258/M.II (1)/2008-2 passed by the first respondent is set aside as the Government has no power to amend the sketch. Basing on the transfer lease deed in favour of the fifth respondent dated 15.1.2005, the present renewal was effected for a period of 20 years. The transfer lease deed is held to be not enforceable and so, the question of renewal of the unauthorized transfer cannot be given effect as the transfer itself is contrary to law or unauthorized under law.

53. From the foregoing discussion, orders in Memo No.14258/M.II(1)/2008-2, dated 24.11.2008 and in Memo No.6675/M.II (1)/2010-5 dated 09.11.2011, passed by the first respondent-Government, and also the order in Proceedings No.1343/R6-1/2010, dated 07.05.2010 passed by the second respondent-Director of Mines & Geology, Hyderabad renewing the lease for a period of 20 years, and the consequential order in Proceedings No.11241/Q/2009, dated 12.05.2010 passed by the third respondent-Assistant Director of Mines and Geology, Warangal, are liable to be set aside, and are accordingly set aside. The fifth respondent-M/s. Venkateswara Granites has no right to quarry in respect of 0.496

hectares of land in survey no.225/120 of Yerraballigudem Village, Nellikuduru Mandal, Warangal District, and also in respect of land admeasuring Ac.0.90 cents in survey no.225/120 and Ac.0.35 cents in survey no.264/1, totally admeasuring Ac.1.25 cents, of Yerraballigudem Village, Nellikuduru Mandal, Warangal District. In view of the fact that M/s. Venkateswara Granites has no valid transfer lease to conduct quarry operations, the question of issuing dispatch permits does not arise and consequently, the prayer sought in Writ Petition No.26910 of 2011 cannot be granted. The order in proceedings No.12068/R6-1/09, dated 5.6.2009 rejecting application of M/s. Veerabhadra Granites (petitioner in Writ Petition No.34372 of 2011) is set aside. The respondents are directed to process the application of petitioners in Writ Petition Nos.21217 of 2012 and 34372 of 2011 and any other applications pending before the third respondent and dispose of the same in accordance with the Act, 1957 and the Rules, 1966.

54. Accordingly, Writ Petition Nos. 21217 of 2012, 34216 of 2011 and 34372 of 2011 are allowed. Writ Petition No.26910 of 2011 is dismissed. No costs. Pending Miscellaneous Petitions in this Writ Petitions shall stand closed. (K.C.BHANU, J.) Date:06 .11.2012

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