Jitendra Singh and anr. Vs. the State of Madhya Pradesh and ors.

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Court : Madhya Pradesh

Decided On : Mar-13-2009

Reported in : 2009(2)MPHT479

Judge : A.K. Patnaik, C.J and ;Ajit Singh, J.

Appellant : Jitendra Singh and anr.

Respondent : The State of Madhya Pradesh and ors.

Advocate for Pet/Ap. : Mr. Naman Nagrath

Judgement :
ORDER

A.K. Patnaik, C.J.

1. The petitioners have filed this writ petition under Article 226 of the Constitution of India for declaring the provisions of Sections 10 and 24A of the Mines and Minerals (Development and Regulation) Act, 1957 (for short 'the Act of 1957') and Rules 22 and 26 and Form 'K' prescribed under Rule 31 of the Mineral Concession Rules, 1960 (for short 'the Rules of 1960') made thereunder as ultra vires the Constitution of India and for quashing the order dated 8-12-2006 of the State Government of Madhya Pradesh in the Mineral Resources Department granting mining lease of the land of the petitioners in favour of the respondent No. 4 as well as the lease agreement dated 15-1-2007 executed between the State Government of Madhya Pradesh and the respondent No. 4 pursuant to the order dated 8-12-

2006 of the State Government.

2. The relevant facts briefly are that the petitioner No. 1 is the recorded Bhumiswami of land in khasra Nos. 56, 57, 354, 369, 370, 371, 372, 374 and 390 situated at Village Sarda, Tehsil Rampur Naikin, District Sidhi. The petitioner No. 2 is the recorded Bhumiswami of the land in Khasra Nos. 283/430, 283/2, 203/2, 201/2, 219/2, 199/2, 120/2, 202/2 situated at Village Kariyajhar, Tehsil Rampur Naikin, District Sidhi. By an order dated 8-12-2006 of the Government of Madhya Pradesh, Mineral Resources Department, mining leases for extracting limestone from the lands of the petitioners have been granted by the State Government in favour of the respondent No. 4 and accordingly mining leases in Form K prescribed under the Rules of 1960 have been executed by the State Government on 15-1-2007 in favour of the respondent No. 4 in respect of the aforesaid lands.

3. Writ petitions were filed by other Bhumiswamis in respect of whose lands similar mining leases had been granted by the State Government. The main ground taken in these writ petitions was that the State Government could not grant mining leases in respect of the land to a third party without the consent of the Bhumiswami of the land and without affording him an opportunity of hearing and learned Single Judge of this Court who heard the writ petitions referred two questions of law to a Division Bench of this Court: (1) whether grant of any lease by the State Government without the consent of the Bhumiswami was sustainable in law and (2) whether the Division Bench of this Court in Premchand v. State 1965 JLJ 413 (CN 73), had rightly held that for assignment of right in respect of any minerals, the mines and quarries by the Government to a third person under Section 247 of the M.P. Land Revenue Code, an opportunity of hearing or consent of Bhumiswami was not required. The Division Bench to which the reference was made held in its opinion dated 2nd May, 2008 in W.P. No. 7745 of 2006 (Shyam Bihari Singh v. State of M.P. and Ors.), reported in : 2008(4)MPHT151 , and the other connected writ petitions that the rights of the lessee and the owner of the private land in respect of which the mining lease of minerals covered under the Act of 1957 was granted are governed by the provisions of the Act of 1957 and the Rules of 1960 and hence the decision of the Division Bench in Premchand (supra), under Section 247 of the M.P. Land Revenue Code was not applicable to grant of

mining lease under the Act of 1957. In the opinion dated 2nd May, 2008, the Division Bench also held that the consent of the owner of the private land or opportunity of hearing to such owner of private land was not mandatory before grant of mining lease under the Act of 1957 and the grant of mining leases by the Government without the consent of the private owner of the land is sustainable in law.

4. A contention was also raised before the Division Bench in W.P. No. 7745 of 2006 and other connected writ petitions that if grant of lease in respect of minerals located in the private land in favour of a third party without the consent of the owner of the private land can be made by the Government, then the valuable right to property which is not only a constitutional right but also human right would be seriously affected, but the Division Bench observed that as and when a challenge to the provisions of the Act of 1957 and the Rules of 1960 is made on this ground, the same can be considered by the Court, but so long as the language of the Act of 1957 and the Rules of 1960 was clear, the Court had no option but to hold that consent of the owner of the private land in respect of which mining lease is sought to be given by the Government is not mandatory. The petitioners have therefore, filed this writ petition challenging the provisions of the Act of 1957 and the Rules of 1960 as ultra vires the Constitution of India.

5. The provisions of the Act of 1957 and the Rules of 1960, which are challenged in this writ petition are Sections 10 and 24 of the Act of 1957 and Rules 22 and 26 of the Rules of 1960 and Form 'K', which is the form of the mining lease deed prescribed by the Rules of 1960. Section 10 of the Act of 1957 is titled 'Application for prospecting licences or mining leases' and provides that the State Government may grant or refuse to grant a reconnaissance permit, prospecting licence or mining lease in respect of any land in which the minerals vest in the Government. Section 24A of the Act of 1957 is titled 'Rights and liabilities of a holder of prospecting licence or mining lease' and makes it lawful for the holder of a reconnaissance permit, prospecting licence or mining lease, his agents or his servants or workmen to enter the lands over which such permit, licence or lease has been granted and to carry out reconnaissance, prospecting or mining operations. Rule 22 of the Rules of 1960 is titled 'Applications for grant of mining

leases' and prescribes the form in which the applications for mining leases are to be made and the documents which are to accompany the application. Rule 26 of the Rules of 1960 is titled 'Refusal of application for grant and renewal of mining lease' and provides that the State Government may after giving to the applicant an opportunity of being heard and for reasons to be recorded in writing and communicated to the applicant, refuse to grant or renew a mining lease over the whole or part of the area applied for. Form 'K' is the form of mining lease deed prescribed under Rule 31 of the Rules of 1960. These impugned provisions of the Act of 1957 and the Rules of 1960 do not make the consent of the owner of the land or an opportunity of hearing to the owner of the land mandatory before grant of a mining lease to the applicant of a mining lease.

6. Mr. Naman Nagrath, learned Counsel for the petitioners submitted that the right to property is a Constitutional right guaranteed under Article 300-A of the Constitution of India. He submitted that in Chairman, Indore Vikas Pradhikaran v. Pure Industrial Power and Chemicals Limited and Ors. : AIR 2007 SC2458 , the Supreme Court has held that the right to property is now considered not only a Constitutional right but also a human right. He submitted that the petitioners as Bhumiswamis of the land have a right to occupy and use their land. He cited the decision in Jilubhai Nanbhai Khachar v. State of Gujarat and Anr. : AIR 1995 SC142 , in which the Supreme Court has taken a view that taking possession of property belonging to a person amounts to depriving the person of his property. He argued that Section 10 of the Act of 1957, in so far as it empowers the State Government to grant a mining lease and Section 24-A of the Act of 1957 in so far as it makes it lawful for a lessee of a mining lease or its agent, or its servant or workman to enter upon the land in respect of which such mining lease has been granted and to carry out mining operations, amount to taking of possession of the land of the Bhumiswami and depriving him of his property. He submitted that Sections 10 and 24-A of the Act of 1957 and Rules 22 and 26 and Form 'K' prescribed under Section 31 of the Rules of 1960, which do not make opportunity of hearing to the Bhumiswami or consent of the Bhumiswami mandatory before grant of mining lease and before allowing the lessee to enter into the land of the Bhumiswami are unreasonable and arbitrary and are violative of Article 14 of the Constitution. He also submitted that in Olga Tellis v. Bombay Municipal

Corporation : AIR 1986 SC180 , the Supreme Court has held that the right to life guaranteed under Article 21 of the Constitution includes the right to livelihood and any person who is deprived of his right to livelihood except in accordance with the just and fair procedure established by law can challenge the deprivation of his right to life conferred by Article 21 of the Constitution. He submitted that in Olga Tellis (supra), the Supreme Court has further held that the procedure prescribed by law for the deprivation of right conferred by Article 21 of the Constitution must be fair, just and reasonable. He argued that since no opportunity of hearing is granted to the occupier of the land, nor his consent taken before grant of a mining lease and before allowing entry to the lessee or his agent or servant or workman upon the land of the occupier for carrying out the mining operations, the impugned provisions of Sections 10 and 24-A of the Act of 1957 are ultra vires Articles 14 and 21Bhagwan Das v. State of U.P. and Ors. : [1976]3SCR869 , submitted that the rights over the minerals vest in the State Government and under impugned Section 10 of the Act of 1957, the State Government only assigns its own rights over the minerals to a lessee. He further submitted that the occupier of a land, however, has a right to use the surface of the land and impugned Section 24-A of the Act of 1957 makes it lawful for the lessee, his agent or his servant or his workmen to enter into the land over which lease has been granted to carry out mining operations and for such interference with the rights of the occupier of the land, the impugned Section 24-A of the Act of 1957 provides for compensation for any loss or damage, which arises, or has arisen from or is in consequence of the mining operations. He argued that Article 300A of the Constitution itself provides for deprivation of property with the authority of law and the impugned Section 24-A of the Act of 1957 is a provision of law authorising deprivation of the right to property of the occupant of the land in respect of which the mining lease is granted by the State Government.

8. Mr. S.B. Upadhyaya, learned Senior Counsel appearing for the respondent No. 4, in reply, submitted that the Act of 1957 is specified in the Ninth Schedule of the Constitution with effect from 10th August, 1975 and Article 31B of the Constitution provides that none of the Acts and Regulations prescribed in the Ninth Schedule of the Constitution or any provision thereof shall be deemed to be void or ever to have become void, on the ground that such Act, Regulation or provision is

inconsistent with, or takes away or abridges any of the rights conferred by any provisions of Part III of the Constitution. He submitted that in Waman Rao v. Union of India and Ors. : AIR 1981 SC271 , the Supreme Court has held that various constitutional amendments by which amendments were made to Ninth Schedule of the Constitution on or after 24th April, 1973 when the judgment of the Supreme Court in the case of Keshwanand Bharati v. State of Kerala AIR 1973 SC 1461 was delivered, will be valid only if they do not damage or destroy the basic feature of the Constitution. He submitted that the right to property guaranteed under Article 300A of the Constitution is also not a basic feature of the Constitution as has been observed by Krishna Iyer, J., in Bhim Singhji v. Union of India and Ors. : AIR 1981 SC234 . He further submitted that since the Act of 1957 is specified in the Ninth Schedule to the Constitution by the Thirty Ninth Constitutional Amendment with effect from 10th August, 1975 and Sections 10 and 24-A of the Act of 1957 do not in any way destroy the basic feature of the Constitution, these provisions are saved from challenge on the ground that they are violative of any of the rights guaranteed by Part III of the Constitution. He further submitted that the State Government has a right over the minerals embedded in the land and can lease out the minerals to any party for development of the minerals and the lessee of a mining lease must be allowed to carry out mining operations in the land. He submitted that as the occupier of the surface of the land is compensated for any loss or damage that he may suffer, the provisions in Sections 10 and 24-A of the Act of 1957 and Rules 22 and 26 of the Rules of 1960 are reasonable and fair.

9. Article 31B of the Constitution is extracted herein below:

31-B. Validation of certain Acts and Regulations.- Without prejudice to the generality of the provisions contained in Article 31A, none of the Acts and Regulations specified in the Ninth Schedule nor any of the provision thereof shall be deemed to be void or ever to have become void, on the ground that such Act, Regulation or provision is inconsistent with, or takes away or abridges any of the rights conferred by any provision of this Part, and notwithstanding any judgment, decree or order of any Court or Tribunal to the contrary, each of the said Acts and Regulations shall, subject to the power of any competent Legislature to repeal or amend it, continue in force.

In Keshwanand Bharati (supra), decided on 24th April, 1973, the majority of the Judges of the Supreme Court held that Parliament has no power to amend the Constitution so as to damage or destroy its basic or essential feature or structure. After the judgment in the case of Keshwanand Bharati (supra), the Ninth Schedule to the Constitution was amended from time to time to include various Acts and Regulations and a question arose before the Supreme Court in Waman Rao (supra), whether such constitutional amendments to include Acts and Regulations in the Ninth Schedule are constitutionally valid and the Supreme Court held in Para 52 at Page 291 as reported in the AIR that all Acts and Regulations included in the Ninth Schedule to the Constitution prior to 24th April, 1973 will receive the full protection of Article 31-B and they will not be open to challenge on the ground that they are inconsistent with, or takes away or abridges any of the rights conferred in Part III of the Constitution, but Acts and Regulations which are, or will be included in the Ninth Schedule to the Constitution on or after 24th April, 1973, will be constitutionally valid and will receive the protection of Article 31-B of the Constitution only if they do not damage or destroy the basic structure of the Constitution. The Act of 1957 was included in Entry 90 in the Ninth Schedule of the Constitution with effect from 10th August, 1975 by the Thirty Ninth Constitution Amendment and therefore, the provisions of Sections 10 and 24-A of the Act of 1957 impugned in this writ petition will be constitutionally valid and will receive the protection of Article 31-B of the Constitution if they do not damage or destroy the basic structure of the Constitution. Hence, we will have to find out whether they damage or destroy the basic structure of the Constitution.

10. The impugned Sections 10 and 24-A of the Act of 1957 are extracted herein below:

10. Application for prospecting licences or mining leases.:

(1) An application for a reconnaissance permit, prospecting licence or mining lease in respect of any land in which the minerals vest in the Government shall be made to the State Government concerned in the prescribed form and shall be accompanied by the prescribed fee.

(2) Where an application is received under Sub-section (1), there shall be sent to the applicant an acknowledgment of its receipt within the prescribed time and in the prescribed form.

(3) On receipt of an application under this section, the State Government may, having regard to the provisions of this Act and any rules made thereunder, grant or refuse to grant the permit, licence or lease.

24-A. Rights and liabilities of a holder of prospecting licence or mining lease.:

(1) On the issue of a reconnaissance permit, prospecting licence or mining lease under this Act and the Rules made thereunder, it shall be lawful for the holder of such permit, licence or lease, his agents or his servants or workmen to enter the lands over which such permit, lease or licence had been granted at all times during its currency and carry out all such reconnaissance prospecting or mining operations as may be prescribed:

Provided that no person shall enter into any building or upon an enclosed Court or garden attached to a dwelling-house (except with the consent of the occupier thereof) without previously giving such occupier at least seven days notice in writing of his intention to do so.

(2) The holder of a reconnaissance permit, prospecting licence or mining lease referred to in Sub-section (1) shall be liable to pay compensation in such manner as may be prescribed to the occupier of the surface of the land granted under such permit, licence or lease for any loss or damage which is likely to arise or has arisen from or in consequence of the reconnaissance, mining or prospecting operations.

(3) The amount of compensation payable under Sub-section (2) shall be determined by the State Government in the manner prescribed.

11. So far as the State of Madhya Pradesh is concerned, Section 247 of the Madhya Pradesh Land Revenue Code, 1959 states that 'the right to all minerals, mines and quarries shall vest in the State Government which shall have all powers necessary for proper enjoyment of such rights. A reading of Sub-section (1) of

Section 10 of the Act of 1957, quoted above, would show that under the provision, State Government has the power to grant permit, licence or lease in respect of any land in which the minerals vest in the Government. Thus, it is only where the property in minerals vests in the State Government that the Sate Government has the power to grant a permit, licence or lease and not otherwise. Sub-section (1) of impugned Section 24-A of the Act of 1957, quoted above, provides that on the issue of a reconnaissance permit, prospecting licence or mining lease under the Act and the Rules, it shall be lawful for the holders of such permit, licence or lease, his agents or his servants or workmen to enter the lands over which such permit, licence or lease is granted at all times during its currency and carry out all such reconnaissance, prospecting or mining operations as may be prescribed. An occupier of the surface of the land obviously has a right to occupy and use the land in the manner he chooses and this right of the occupier of the surface of the land is no doubt affected when a mining permit, lease or licence is granted in favour of a third party by the State Government under Section 10 of the Act of 1957. Hence, the provisions of Sections 10 and 24-A of the Act of 1957 have the effect of depriving an occupier of the surface of the land, his right to property but the question we have to decide is whether they are ultra vires Article 300A of the Constitution.

12. Article 300-A of the Constitution is quoted herein below:

300-A. Persons not to be deprived of property save by authority of law.- No person shall be deprived of his properly save by authority of law.

Article 300-A of the Constitution quoted above provides that no person shall be deprived of his property save as authorized by law. Thus, Article 300-A itself authorises deprivation of property by authority of law and no constitutional amendment even is necessary to deprive a person of his property. The right to property as guaranteed under Article 300-A of the Constitution cannot therefore be a basic feature of the Constitution. In Bhim Singhji (supra), Krishna Iyer, J. has also taken a view that the right of property is not part of the basic structure of the Constitution. We are thus of the view that Sections 10 and 24-A of the Act of 1957 do not damage or destroy the basic structure of the Constitution and these being provisions of law authorising deprivation of property are also not ultra vires Article 300-A of the Constitution.

13. We may now consider whether the impugned provisions violate the right to livelihood guaranteed to every person under Article 21 of the Constitution. A reading of Sub-section (2) of Section 24-A of the Act of 1957 shows that the holder of a reconnaissance permit, prospecting licence or mining lease is liable to pay compensation in such manner as may be prescribed to the occupier of the surface of the land for any loss or damage which is likely to arise or has arisen from or in consequence of the reconnaissance or prospecting or mining operations. Sub-section (3) of Section 24-A of the Act of 1957 provides that the amount of compensation payable under Sub-section (2) shall be determined by the State Government in the manner prescribed. Section 3(f) of the Act of 1957 states that in the Act, unless the context otherwise requires, 'prescribed' means prescribed by rules made under the Act. Rules 72 and 73 of the Rules of 1960 prescribe the manner in which the amount of compensation is to be determined and are extracted herein below:

72. Payment of compensation to owner of surface rights, etc.:

(1) The holder of a reconnaissance permit or prospecting licence or mining lease shall be liable to pay to the occupier of the surface of the land over which he holds the reconnaissance permit or prospecting licence or mining lease, as the case may be, such annual compensation as may be determined by an officer appointed by the State Government by notification in this behalf in the manner provided in Sub-rules (2) to (4).

(2) In the case of agricultural land, the amount of annual compensation shall be worked out on the basis of the average annual net income from the cultivation of similar land for the previous three years.

(3) In the case of non-agricultural land, the amount of annual compensation shall be worked out on the basis of the average Annual Letting Value of similar land for the previous three years.

(4) The annual compensation referred to in Sub-rule (1) shall be payable on or before such date as may be specified by the State Government in this behalf.

73. Assessment of compensation for damage.:

(1) After the termination of a reconnaissance permit or a prospecting licence or a mining lease, the State Government shall assess the damage, if any, done to the land by the reconnaissance or prospecting or mining operations and shall determine the amount of compensation payable by the permit holder or licensee or the lessee, as the case may be, to the occupier of the surface land.

(2) Every such assessment shall be made within a period of one year from the date of termination of the reconnaissance permit or prospecting licence or mining lease and shall be carried out by an officer appointed by the State Government by notification in this behalf.

14. Sub-rule (2) of Rule 72 of the Rules of 1960 thus clearly provides that in the case of agricultural land, the amount of annual compensation shall be worked out on the basis of the average annual net income from the cultivation of similar land for the previous three years. Sub-rule (3) of Rule 72 of the Rules of 1960 provides that in case of non-agricultural land, the amount of annual compensation shall be worked out on the basis of average Annual Letting Value of similar land for the previous three years. Sub-rule (4) of Rule 72 of the Rules of 1960 further provides that annual compensation shall be payable on or before such date as may be specified by the State Government in this behalf. Sub-rule (1) of Rule 73 of the Rules of 1960 further provides that after the termination of the reconnaissance permit or a prospecting licence or a mining lease, the State Government shall assess the damage, if any done to the land by the reconnaissance or prospecting or mining operations and shall determine the amount of compensation payable by the permit holder or licensee or the lessee, as the case may be, to the occupier of the surface land. Sub-rule (2) of Rule 73 of the Rules of 1960 further provides that every such assessment shall be made within a period of one year from the date of termination of the reconnaissance permit or prospecting licence or mining lease and shall be carried out by an officer appointed by the State Government by notification in this behalf. These provisions in Sub-sections (2) and (3) of Section

24-A of the Act of 1957 and Rules 72 and 73 of the Rules of 1960, therefore, ensure that the occupier of the surface of the land is reasonably compensated for loss of income which he would have earned by using the land either for agricultural or non-agricultural purpose during the currency of the reconnaissance permit, prospecting licence or mining lease and also for the damage done to the land by the reconnaissance permit or prospecting licence of mining lease soon after termination of the permit, licence or lease, as the case may be. These statutory provisions also ensure that the compensation amount is assessed and paid in time to the occupier of the surface of the land. In our considered opinion, therefore, the right to livelihood guaranteed under Article 21 of the Constitution of the occupier of the surface of the land is not affected by the impugned provisions.

15. The impugned Sections 10 and 24-A of the Act of 1957 and the impugned Rules 22 and 26 of the Rules of 1960, however, do not provide for an opportunity of hearing to the occupier of the surface of the land nor do they provide for consent to be taken of the occupier of the surface of the land before grant of a reconnaissance permit, prospecting licence, or a mining lease. In fact, in Shyam Bihari Singh v. State of M.P. and Ors. W.P. No. 7745 of 2006, and other connected cases, reported in 2008(4) M.P.H.T. 151, the Division Bench in its opinion dated 2nd May, 2008 has held that the consent of the owner of the private land or opportunity of hearing to the occupier of the surface of the land is not mandatory for grant of mining lease under the Act of 1957 and that the grant of mining lease by State Government without consent or opportunity of hearing is sustainable in law. In our considered opinion, however, the absence of provision for opportunity of hearing to the occupier of the surface of the land or consent to be taken from the occupier of the surface of the land before grant of a reconnaissance permit, prospecting licence or a mining lease will not make the impugned provisions unreasonable and arbitrary. Where the property in the minerals vests in the Government, the State Government has the right to grant permit, licence or lease in respect of such minerals and the occupier of the surface of the land who merely has a right to occupy and use the surface of the land in the manner he likes cannot obstruct the exercise of such right of the State Government to grant reconnaissance permit, prospecting licence or a mining lease. Parliament has, therefore, not provided for an opportunity of hearing to the

occupier of the surface of the land and has also not provided that consent has to be taken from the occupier of the surface of the land before grant of a reconnaissance permit, a prospecting licence or a mining lease. Instead, Parliament has provided that the occupier of the surface of the land must be compensated for the loss of income that he may suffer or for the damage to the land on account of carrying out of the operations in accordance with the reconnaissance permit, prospecting licence or mining lease. Considering the nature of the right of the State Government to the minerals embedded in the land and the nature of the right of the occupier of the surface of the land, we do not think that the provisions of Sections 10 and 24-A of the Act of 1957 are unreasonable and arbitrary for not making a mandatory provision for an opportunity of hearing to the occupier of the surface of the land or a consent to be taken of the occupier of the surface of the land before grant of reconnaissance permit, prospecting licence or a mining lease by the State Government to a third party. The impugned Sections 10 and 24 of the Act of 1957 have protected both the right of the State Government to the minerals vested in it as well as the right of the occupier of the surface of the land in a fair and reasonable manner by enabling the State Government to explore and develop the minerals by reconnaissance, prospecting and mining operations through its assignees and at the same time by making provisions for reasonable compensation to the occupier of land for the loss of income or damage to the land that he will suffer by such reconnaissance, prospecting and mining operations.

16. Mr. Naman Nagrath, learned Counsel for the petitioners, next submitted that law is well settled that even where a statute does not provide for an opportunity of hearing, principles of natural justice have to be read into the statutory provision. In support of this proposition, he cited the decisions of the Supreme Court in S.K. Bhargava v. Collector, Chandigarh and Ors. : [1998]2SCR1158 and Mangilal v. Slate of M.P. : 2004 CriLJ880 . He submitted that considering this settled position of law, even if Section 10 of the Act of 1957 and Rules 22 and 26 of the Rules of 1960 do not contain a mandatory provision for an opportunity of hearing to the occupier of the surface of the land, this Court should hold that opportunity of hearing should be provided to the occupier of the surface of the land before grant of mining lease in respect of the land in favour of third party by the State

Government considering the fact that rights of the occupier of the surface of the land would be seriously affected by the grant of such mining lease.

17. Mr. Dharmendra Sharma, learned Assistant Solicitor General for the Union of India and Mr. Upadhyaya, learned Senior Counsel for the respondent No. 4, on the other hand, submitted that Section 10 of the Act of 1957 excludes the application of principles of natural justice by implication and, therefore, the Court cannot hold that an opportunity of hearing has to be granted before grant of a mining lease. He submitted that if the Court holds that principles of natural justice have to be read into Section 10(3) of the Act of 1957, then development and regulations of mines and minerals, which are the objects of the Act of 1957, will be frustrated. He cited the decisions of the Supreme Court in Delhi Transport Corporation v. D.T.C. Mazdoor Congress and Ors. : (1991)ILLJ395SC , Dr. Umrao Singh Choudhary v. State of M.P. and Anr. : [1994]3SCR842 , and Aligarh Muslim University and Ors. v. Mansoor Ali Khan : AIR 2000 SC2783 , in support of this contention.

18. We may first consider the authorities cited by Mr. Naman Nagrath. In S.K. Bhargava (supra), Section 3 of the Haryana Public Moneys (Recovery of Dues) Act, 1979 provided that where any sum is recoverable from a defaulter, the authority named therein shall determine the sum in default and the Supreme Court held that even though Section 3 of the Act did not expressly provided for an opportunity to be given to the alleged defaulter to explain whether any amount is due or not, the principles of natural justice must be read into it in view of the nature of the provision. In Mangilal (supra), Section 357 of the Criminal Procedure Code, 1973, as amended by the State of M.P., came up for interpretation and the question before the Supreme Court was whether the Court was required to hear the accused before fixing the quantum of compensation payable by the accused to any person for any loss or injury caused by the offence committed by the accused and the Supreme Court held that even if the statute was silent in this regard, there could be nothing wrong in spelling out the need to hear the authorities whose rights and interests are likely to be affected by the order that may be passed and the irresistible conclusion was that an opportunity has to be granted to the accused before granting compensation under Section 357(4) of the Criminal Procedure Code. These are cases where determination of the sum had to be done

and the Supreme Court held that even though the statutory provision does not expressly provide for a hearing, an opportunity of hearing must be provided to the party to be affected by the determination.

19. We may also examine the authorities cited by Mr. Upadhyaya. In Delhi Transport Corporation (supra), Sabyasachi Mukharji, J., in his dissenting judgment has observed that the rule of audi alteram partem can be excluded where having regard to the nature of action to be taken, its object and purpose and the scheme of relevant statutory provision, fairness in action does not demand its application and even warrants its exclusion. In Dr. Umrao Singh Choudhary (supra), Section 14 of the M.P. Vishwa Vidyalaya Adhiniyam, 1973, engrafted an elaborate procedure to conduct enquiry against the Vice Chancellor and after giving reasonable opportunity, to take action thereon for his removal from the office, but Section 52 engrafted an exception thereto and provided a different procedure altogether and the Supreme Court held that by necessary implication, the application of principles of natural justice has to be excluded and rejected the contention of the petitioner in that case that he was entitled to grant of opportunity before taking action under Section 52 (1), saying that his procedure will be self defeating. In Aligarh Muslim University and Ors. (supra), the Supreme Court observed that if upon admitted and undisputed facts, only one conclusion was possible, it was not necessary to quash the order which was passed in violation of the principles of natural justice as observing the principles of natural justice would be an useless formality.

20. After considering all the authorities cited by both Mr. Nagrath and Mr. Upadhyaya, we are of the opinion that where the statute does not itself provide for an opportunity of hearing, the nature of the particular statutory provision has to be kept in mind by the Court for deciding whether the principles of natural justice will have to be read into that statutory provision. As we have seen, Parliament has conferred power on the State Government to grant reconnaissance permit, prospecting licence or a mining lease in respect of the minerals vested in the State Government to a party and if an opportunity of hearing was provided to the occupier of the surface of the land in respect of which the reconnaissance permit, prospecting licence or a mining lease is granted, the State Government would not

be able to assign its right over the minerals vested in it and develop the mines and minerals and the object of the Act of 1957 would be frustrated. Hence, considering the object of the Act of 1957 and the nature of the provisions as well as the right of the State Government to the minerals embedded in the land, an opportunity of hearing to the occupier of the surface of the land before grant of the reconnaissance permit, prospecting licence or mining lease must be held as impliedly excluded.

21. But we hasten to add that the opportunity of hearing to the occupier of the surface of the land before determination of compensation though not expressly provided in Sub-sections (2) and (3) of Section 24-A of the Act of 1957 and the Rules 72 and 73 of the Rules of 1960, will have to be granted to the occupier of the surface of the land considering the nature of these statutory provisions. Sub-section (2) of Section 24-A of the Rules of 1960 provides that the holder of a reconnaissance permit, prospecting licence or mining lease is liable to pay compensation to the occupier of the surface of the land for any loss or damage which is likely to arise or has arisen from or in consequence of reconnaissance, prospecting or mining operations and Sub-section (3) of Section 24-A of the Act of 1957 provides that the amount of compensation shall be determined by the State Government in the manner prescribed. Rules 72 and 73 of the Rules of 1960 provide the manner in which such compensation has to be determined by the State Government. Obviously, the occupier of the land has to be given an opportunity to make his claim in accordance with the aforesaid statutory provisions and support his claim before the authority determining the compensation amount by materials, otherwise the compensation amount that is paid to the occupier of the surface of the land may not be adequate compared to the average annual net income of agricultural land or average Annual letting Value of similar land for the previous three years or compared to the actual damage done to this land by the reconnaissance, prospecting or mining operations carried out by the assignee of the State Government. Hence, the principles of natural justice are implicit in Sub-sections-(2) and (3) of Section 24-A and Rules 72 and 73, considering the nature of these statutory provisions and the kind of determination that the authority has to make under these statutory provisions. If reasonable compensation in accordance with the provisions of Sub-sections (2) and (3) of Section 24-A of the Act of 1957

and Rules 72 and 73 of the Rules of 1960 is not determined and paid to such occupier of the surface of the land, the right of such occupier of the surface of the land to livelihood guaranteed under Article 21 of the Constitution of India shall be affected.

22. In the result, while upholding the provisions of Sections 10 and 24-A of the Act of 1957 and Rules 22 and 26 and Form 'K' prescribed under Rule 31 of the Rules of 1960 as constitutionally valid, we direct that the petitioners will be afforded opportunity of hearing while determining compensation payable to the petitioners under Sub-sections (2) and (3) of Section 24-A of the Act of 1957 and Rules 72 and 73 of the Rules of 1960. We further direct that such compensation will be determined and paid in time to the petitioners in accordance with the said statutory provisions. With the aforesaid findings and directions, the writ petition stands disposed of. No order as to costs.