

Ms Mysore Minerals Ltd. Vs. the State of Karnataka and ors.

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SooperKanoon Citation : sooperkanoon.com/925407

Court : Karnataka

Decided On : Apr-13-2012

Judge : Vtkramajit Sen; B.V.Nagarathna , Jj.

Acts : Mining Concession Rules. 1960 - Rule 24(1); Bombay Cinema Rules, 1954 - Rule 6; Mineral Concession Rules, 1960 - Rule 54; [Constitution of India](#) - Article 226, 32; [Limitation Act, 1963](#) ; [Land Acquisition Act, 1894](#) - Section 4 ; Forest (Conservation) Act, 1980. - Section 2

Appeal No. : W.P.No.2643 of 2008 (GM-MM-S).

Appellant : Ms Mysore Minerals Ltd

Respondent : The State of Karnataka and ors.

Advocate for Pet/Ap. : SRI. D.N. NANJUNDA REDDY,; SRI.A.K.VASANTH, ADVS

Judgement :

NAGARATHNA J.

1. M/s. Mysore Minerals Limited, which is a public sector company, has filed this writ petition assailing the notifications dated 27/02/2006 and 29/07/2006 (Annexures "F" and "G" respectively), as well as the mining lease deed bearing No.ML.2516 dated 14/02/2006 {Annexure "H") issued in favour of Respondent No.3 with regard to 35 hectares of mining area, which according to the petitioner

had been granted to it.

2. The relevant facts of the case are that the petitioner had applied for grant of mining lease in respect of 168 hectares (415 Acres) at S.ubbarayanahalli village. Sandur Taluk, Bellary District on 01/05/1979. According to the petitioner, the aforesaid area fell within the area reserved for exploitation by the State Government as per notification dated 23/02/1959. That on 05/01/1980. the first respondent - Government of Karnataka had granted working permission to the petitioner over the aforesaid extent and lawful possession of the entire area was given to it and that in respect of 80.93 hectares, the petitioner is extracting iron ore and the remaining has not been surrendered. However, lease rent has been paid in respect of the entire 168 hectares. It appears that the Government of Karnataka had recommended to the Government of India grant of lease over the entire area of 168 hectares to the petitioner by letter dated 17/01/1999 and Secretary. Commerce and Industries. Department of the Government of India, informed the petitioner by letter dated 16/03/1999 about the various environmental and other clearances to be obtained by the petitioner. It appears that % letter dated 05/01/1999 the Director of Mines and Geology-Respondent. No.2 herein had granted working permission to the petitioner for 163.2 hectares, for a period of 20 years, subject to forest clearances. According to the petitioner, it had obtained all clearances as advised by the Government of India, in respect of 81 hectares only, though according to the petitioner was in possession of the entire 163.2 hectares.

3. When matters stood thus, respondent No.3 had applied for grant of a mining lease in respect of 110 hectares in S.M.Block of Sandur Taluk, Bellary Dist., on 31/07/1980. Mining lease was granted by the Government of Karnataka. in respect of 79.2 hectares, in favour of the respondent No.3 by Notification dated 27/02/2006. Subsequently, the extent was reduced to 53.6 hectares as per Notification dated 29/07/2006. Accordingly, mining lease deed was executed in favour of respondent No.3 on 14.3.2006. It is also averred that M/s. J.S.W.Steels Limited has challenged the said lease deed in W.P.No. 17954/2007, in which the petitioner has filed an application for impleadment.

4. It is the case of the petitioner that while working permission was granted to the petitioner on 05/01/ 1980 in respect of 163.2 hectares in subbarayana shalli village, the Government of Karnataka has also granted mining licence over an extent of 138 acres overlapping the aforesaid area to the third respondent to an extent of 35 hectares (81 acres} in the original lease application of the petitioner.

5. It is the further case of the petitioner that application filed by respondent No.3 on 31/07/1980 stood deemed rejected on 31/04/1981. since the application was not: disposed of within the statutory period of nine months and that the State Government had no jurisdiction to consider the same again vide Rule 24(1) of Mining Concession Rules !960 (hereinafter, referred to as the "M.C.Rules'. for the sake of brevity). However, the State Government granted a mining lease over an extent of 79.2 hectares, subsequently, reduced to 55.2 hectares, by considering the 3rtl respondent's application dated 31/07/1980. though, the application had rendered itself infructuous and could not be acted upon and the State Government had no jurisdiction to consider the same. Further according to the petitioner 35 hectares granted to respondent No.3 is overlapping with the mining lease granted to the petitioner. Under the circumstances, the petitioner has sought the aforesaid reliefs.

6. In response to the said writ petition, respondents 1 and 2 have filed statement of objections inter alia, contending that the writ petition is not maintainable as the petitioner has an alternative remedy of a revision under MC.Rules read with Section 30 of the M.M.R.D. Act. 1957. Further, there is a delay in filing the writ petition as the impugned orders were passed in the year 2006, whereas, the writ petition has been filed in the year 2008. It is also stated that the application filed by the petitioner elated 01/05/1979 was rejected on 11/09/1984. Subsequently, another application was filed on 07/08/1997 in respect of the same area and an extent of 80.93 hectares was notified for grant, as prior approval of the Government of India had been obtained for the said extent. Therefore, the petitioner has hp focus standi to prefer this writ petition assailing the mining lease granted to Respondent No,3. More over, in respect of the application dated 07/08/1997, an area of 93 hectares was ordered in favour of the petitioner by Notification dated 27/ 11/2007, which has been accepted; that even prior to the

said order. Notification dated 27/02/2006 was issued in favour of respondent No.3. According to these respondents, the fact that two separate notifications have been issued in favour of the petitioner and respondent No.3 would imply that the areas leased out to them are distinct and that there is no overlapping of 35 hectares of mining area as contended by the petitioner. It is, therefore, contended that the petitioner cannot have any grievance with regard to the mining lease granted in favour of respondent No.3. Hence, a prayer for dismissal of the writ petition has been made.

7. Respondent No.3 had also filed statement of objections and subsequent to his demise, his Legal Representatives have also filed statement of objections adopting the statement of objections filed by respondent No.3 while raising additional contentions. Preliminary objection with regard to there being delay and laches in filing the writ petition has been taken by narrating the various dates leading up to the execution of the lease deed in favour of respondent No.3. It is also contended that the writ petition has to be dismissed as there is suppression of material facts and particulars as it is predicated on false averments and submissions. It is also contended that the petitioner has no locus standi to file the writ petition. In support of the statement of objections, certain documents have also been produced.

8. We have heard the learned counsel for the parties.

9. At the outset, learned Senior Counsel appearing for respondent No.3 raised a preliminary issue with regard to the maintainability of the writ petition. It was contended that the writ petition has to be dismissed for not exhausting the statutory remedy of revision available under the Act and Rules. Secondly, the writ petition does not deserve consideration of the case on merits since there is inordinate delay in filing the same. It was, Thirdly, contended that there has been suppression and mis statement of material facts and therefore, the writ petition has to be dismissed in limine. Apart from this, another contention raised by the third respondent is with regard to the locus standi of the petitioner to maintain the writ petition. Elaborating the same with reference to the statement of objections filed, it was argued that the petitioner had filed an application dated 01.05.1979 for grant

of mining lease over an area of 168 hectares in Subbarayanahalli Village. Sandur Taluk, Bellary District, as per Annexure-A which application was rejected and the same was communicated by letter dated 11.09.1984 vide Annexure-R1 on the ground that the area in question was required by M/s. National Mineral Development Corporation Limited (NMDCL) for exploitation in the public sector, thereafter, a fresh application was filed by the petitioner on 07.08.1997 in respect of 1125.67 hectares which was processed and notification dated 27.11.2007 was issued for an area of 80.93 hectares only as per Annexure-R3 in view of the prior approval of the Government of India to an extent of 80.94 hectares under Section 2 of the Forest (Conservation) Act, 1980.

10. It is further stated that though initially an extent of 168 hectares had been reserved by the State Government by notification dated 23.02.1959. The same had been de-reserved subsequently- on 15.03.2003 and applications were invited from all interested parties with regard to the said extent of land. It is, therefore, contended that when applications were called for, the first respondent could not have granted a mining lease in respect of 80.93 hectares to the petitioner on 27.11.2007. The said notification dated 27.11.2007 is a subject matter of W.P.No 781/2007. which is pending consideration before this court. It is also contended that since the petitioner made a fresh application for grant of mining lease on 07.08.1997, the earlier application dated 01.05.1979 did not remain for consideration and in any case, it had been rejected by order dated 11.09.1984 vide Annexure-R1.

Therefore it is stated that the petitioner cannot claim any priority over respondent No.3's application filed in the year 1980. It is also contended that the first respondent had made a recommendation on the application of the petitioner dated 07.08.1997 and since the approval of the Government of India was obtained to an extent of 80.93 hectares, the lease was entered into in respect of the said extent on 27.11.2007, which means, the petitioner had no claim on any balance area as it had not obtained any clearance from the Central Government, it is also denied that the State Government had granted any working permission over an area of 415 acres to the petitioner by order dated 05.01.1980. However, when the petitioner's application dated 01.05.1979 has been rejected, any grant of working permission

beyond the said date is impermissible. It is stated that pursuant to the application dated 31.07.1980 filed by the third respondent, mining lease dated 27.02.2006 has been granted initially to an extent of 79.2 hectares (198 acres) and subsequently reduced to 53.6 hectares (134 acres) and lease deed dated 14.03.2006 for a period of 20 years has been executed. In the circumstances, it is contended that the petitioner has no locus standi to challenge the mining lease granted to the third respondent. Further it is argued that there has been suppression of material facts in as much as the rejection of petitioners application dated 1.5.1979 on 11.9.1984 and the grant of mining lease on 27.11.2007 pursuant to application dated 7.8.1997 have not been brought to the notice of this court and therefore no relief can be granted to the petitioner.

11. As far as the delay in filing the writ petition is concerned, it was contended that right from August. 2003. there have been steps taken for the grant of mining lease including the issuance of newspaper publication as well as gazette notification with regard to mining operation in S.M.Block, Kumaraswamy Range, Sandur Taluk. Bellary District and thereafter, the application filed by the third respondent was processed and the mining lease was executed in favour of respondent No.3 on 14.03.2006, but it is after a lapse of two years that the writ petition has been filed without availing the statutory remedy available under Rule 54 of the M.C.Rules. Therefore, the writ petition has to be dismissed on the ground of delay and laches. In support of these submissions, reliance has been placed on certain decisions.

12. Per contra, learned counsel for the petitioner has drawn our attention to the various documents annexed to the writ petition and has contended that there has been an overlapping in the mining lease granted to respondent No.3, vis-a-vis the petitioner, since 80.93 hectares was granted to the petitioner, though an extent of 168 hectares was reserved for the petitioner and hence, the application of respondent No.3 could not have been entertained.

13. Learned Senior Counsel has fairly admitted that the rejection of application of the petitioner dated 11.09.1984 has not been brought to the notice of the court. However, it is contended that the respondent-authorities could not have granted a mining lease to respondent No.3 when there is an overlapping to an extent of 35

hectares. It is therefore, contended that the writ petition would have to be heard on merits and the validity of the mining lease dated 14.03.2006 has to be adjudicated upon in this writ petition.

14. Learned Addl. Government Advocate during the course of his submission has supported the mining lease dated 14.03.2006 as a valid agreement which is in accordance with law. He, therefore, sought dismissal of the writ petition.

15. Having heard the learned counsel on both sides and on perusal of the material on record, we find that the petitioner had made an application dated 01.05.1979 for grant of mining lease to an extent, of about 415 acres (168 hectares] at Subbarayanahalli Village. Sandur Taluk. The Government of India had declined to grant mining lease in favour of the petitioner and the State Government accepted the decision of the Government of India and rejected the application of the petitioner on 11.09.1984 and the said rejection has attained finality. Therefore, the petitioner cannot place any reliance on the application dated 01.05.1979. Hence, reliance placed on the communication dated 05.01.1980 vide Annexure-C is of no assistance to the petitioner.

16. Thereafter the petitioner made one more application for grant of mining lease on 07.08.1997 with regard to 1125.67 hectares in the very same village. By a communication dated 06.01.1999 addressed by the second respondent to the first respondent, it was stated that the petitioner had obtained Forest Clearance from the concerned authorities to an extent of 78.51 hectares (194 acres only) and therefore, notification to that extent could be issued. Accordingly, on 07.01.1999 a communication was addressed to the Secretary, Ministry of Mines, Government of India, New Delhi, that Forest Clearance was obtained to an extent of 194 acres only. As a result, vide notification dated 27.11.2007, State Government accorded sanction for grant of mining lease for a period of 20 years with effect from 13.04.1999 in favour of the petitioner over an area of 80.93 hectares subject to statutory compliance in respect of which Forest Clearance had been obtained by the petitioner. Therefore, the application dated 07.08.1997 filed by the petitioner culminated in the notification dated 27.11.2007. Annexure-R4 is a copy of the sketch showing the extent of 80.93 hectares (200 acres) granted in favour of the

petitioner.

17. In this context, letter dated 11.03.1992 from the office of the Principal Chief Conservator of Forest-II, Bangalore, to the Secretary to Government, Forest Department (Annexure-R5) is relevant as it states that the total forest land of 168 hectares was initially sanctioned, but the lessee i.e., the petitioner had offered to surrender 87.07 hectares of land to the Forest Department and therefore, the renewal proposal was to an extent of 80.93 hectares only. Accordingly, mining lease deed dated 17.04.2010 was executed for a period of 20 years with effect from 13.04.1999 (Annexure R6). The same relates back to the notification dated 27.11.2007. We find that the said notification issued in favour of the petitioner has been subsequent to the mining lease executed by the State Government in favour of respondent No.3 as per Annexure-F dated 14.03.2006 for a period of 20 years in respect of 198 acres (80.12 hectares) at S.M. Block Village, which was subsequently reduced to 134 acres by Corrigendum dated 29.07.2006. It is the said lease deed dated 14.03.2006 which is assailed in this writ petition on the ground that there is overlapping to an extent of 35 hectares. In the background of the aforesaid undisputed facts, The preliminary objections of respondent No.3 would have to be considered.

18. From the aforesaid narration, it becomes clear that the application of the petitioner dated 01.05.1979 resulted in the rejection order dated 11.09.1984 (Annexure-R1). The second application dated 07.08.1997 was considered and culminated in the notification dated 27.11.2007. The application filed by the third respondent is dated 31.07.1980. Having regard to the aforesaid facts, it cannot be held that the petitioner's application dated 01.05.1979 being earlier in point of time, ought to have No.3 dated 31.07.1980. It is reiterated that the application dated 01.05.1979 had been considered even before the application filed by the third respondent on 31.07.1980 was considered and rejected in the year 1984 itself. As far as the second application of the third respondent dated 07.08.1997 is concerned, the same is subsequent to the application dated 31.07.1980 filed by the respondent No.3. Under the circumstances, the application of respondent No.3 was considered resulting in execution of an agreement dated 14.03.2006 to an extent of 198 acres and subsequently reduced to 134 acres vide Corrigendum

dated 29.07.2006. Thereafter the petitioners 2nd application dated 07.08.1997 was considered and notification dated 27.11.2007 was issued. It is two years subsequent to the issuance- of mining lease in favour of respondent No.3 and subsequent to the issuance of notification dated 27.11.2007. that the present writ petition has been filed. We find that the petitioner's applications for grant of mining lease has been considered independent of the application filed by respondent No.3. The extent of mining lease granted in favour of the petitioner by notification dated 27.11.2007 is distinct and different from the extent of lease granted in favour of respondent No.3 as per lease agreement dated 14.02.2000 which is earlier in point of time. Therefore, the petitioner cannot have any grievance with regard to the area granted to respondent No.3 as they are mutually exclusive. Therefore, we find that the petitioner has no locus stand: to assail the mining lease granted to respondent No.3.

19. In this content, it would be relevant to rely on the decision of the Apex Court in the case of *Jasbhai Motibhai Desai v. Roshan Kumar, Haji Bashir Ahmed and others* 1(1976) 1 SCC 671). In the said case, it has been held that the proprietor of a cinema theatre holding a licence for exhibiting cinematograph films was held to be not entitled to invoke the certiorari jurisdiction *ex debito justitiae* to get a 'No-objection Certificate', granted under Rule 0 of the Bombay Cinema Rules, 1954 by the District Magistrate in favour of a rival in the trade, brought up and adjudged.

20. In the said decision, the Supreme Court categorised the applicant seeking a writ of certiorari into three categories:

i) person aggrieved

ii) stranger and

iii) busy body or meddlesome interloper. While distinguishing 'person aggrieved' from strangers' at Paragraph 38 the following tests have been laid:-

"38. To distinguish such applicants from strangers', among them, some broad tests may be deduced from the conspectus made above. These tests are not absolute and ultimate. Their efficacy varies according to the circumstances of the

case, including the statutory context in which the matter falls to be considered. These are: Whether the applicant is a person whose legal right has been infringed? Has he suffered a legal wrong or injury, in the sense that his interest, recognised by law, has been prejudicially and directly affected by the act or omission of the authority, complained of? Is he a person who has suffered a legal grievance, a person "against whom a decision has been pronounced which has wrongfully deprived him of something or wrongfully refused him something, or wrongfully affected his title to something? Has he a special and substantial grievance of his own beyond some grievance or inconvenience suffered by him in common with the rest of the public? Was he entitled to object and be heard by the authority before it took the impugned action? If so, was he prejudicially affected in the exercise of that right by the act of usurpation of jurisdiction on the part of the authority? Is the statute, in the context of which the scope of the words "person aggrieved" is being considered, a social welfare measure designed to lay down ethical or professional standards of conduct for the community? Or is it a statute dealing with private rights of particular individuals? At paragraph 49, it is opined as follows:-

"49. While a procrustean approach should be avoided, as a rule, the Court should not interfere at the instance of a stranger¹ unless there are exceptional circumstances involving a grave miscarriage of justice having an adverse impact on public interests. Assuming that the appellant, is a stranger', and not a busy body, then also there are no exceptional circumstances in the present case which would justify the issue a writ of certiorari at his instance. On the contrary, the result of the exercise of these discretionary powers, in his favour, will, on balance, be against public policy. It will eliminate healthy competition in this business which is so essential to raise commercial morality; it will tend to perpetuate the appellant's monopoly of cinema business in the town; and above all. it will in effect seriously injure the fundamental rights of respondents 1 and 2. which they have under Article 19(1) (g) of the Constitution, to carry on trade or business subject to reasonable restrictions imposed by law.

21. Placing reliance on an earlier decision in the case of *Nagar Rice and Flour Mills v. N.T.Gowda* [(1970) 3 SCR 846], the Supreme Court opined that jurisdiction

under Article 226 in general and certiorari in particular, is discretionary and in order to invoke extraordinary jurisdiction, locus standi must be insisted upon.

22. The said decision is squarely applicable to the present case. Therefore, we hold that the petitioner has no locus stands to assail the lease granted in favour of respondent No.3.

23. Despite the above finding we next consider as to whether the writ petition has to be dismissed on the ground of delay and laches. It is noticed that the mining lease agreement was executed in favour of the third respondent on 14.03.2006. In the statement of objections, it has been averred that the writ petition has been filed on 14.02.2008 i.e., two years after the notification dated 27.02.2006 granting mining lease was issued in favour of respondent No.3, though the petitioner was well aware of the fact that right from the year 2003. the application of the third respondent was under process. Also the petitioner being a neighbouring lessee was very well aware of these facts. Particularly when Respondent No.3 commenced mining operations on the leased lands.

24. It is noticed that as early as on 07.08.2003. public notice was issued with regard to Iron Ore Mines at S.M.Block, Kumarswamy Range. Sandu Taluk, Bellary District and on 23.03.2005 the grant of environmental clearance for the said iron ore mines was notified. On 01.09.2005, Gazette notification regarding grant of approval under the Forest (Conservation) Act. 1980 for mining operations in favour of respondent No.3 was issued, which was followed by another notification gazetted on 27.02.2006 regarding the grant of mining lease which was executed on 14.03.2006. It is stated that respondent No.3 commenced mining operations in March. 2006 itself by investing huge sums of money. From the aforesaid facts, it becomes clear that the grant of mining lease to respondent No.3 was preceded by issuance of relevant notices and notifications and the execution of the lease was in public domain. The petitioner could have availed of a statutory remedy under Rule 54 of the Mineral Concession Rules. 1960 by filing a revision before the Government: of India within the period prescribed. The said remedy has not been availed by the petitioner, instead, after a lapse of over two years, the present writ petition has been filed directly assailing the grant of a mining lease to respondent

No.3. The fact that a statutory remedy has not been availed in the instant case and the writ petition having been filed after over a period of two years would clearly imply that there is delay and laches on the part of the petitioner in seeking quashing of the mining lease granted in favour of respondent No.3. The petitioner being a Public Sector Company in the same line of business, could not have been ignorant with regard to the grant, of mining lease to respondent No.3. The absence of availing of a statutory remedy in time could not have be circumvented by the petitioner by filing a writ petition under Article 226 of the [Constitution of India](#). We are not for a moment stating that the writ petition cannot be entertained on account of availability of an alternative remedy. What we find is that the petitioner for the reasons best known to it, has failed to avail the statutory remedy in time and instead, has filed this writ petition in the year 2008 after a lapse of nearly two years of the execution of the mining lease in favour of respondent No.3, which we find is belated.

25. In fact, the Apex Court, in several decisions has held that the question of delay and laches is one which has to be considered on the threshold before exercising discretion under Article 226 of the [Constitution of India](#). There are plethora of decisions of the Apex Court on the issue regarding delay and as to how a Court of equity exercising jurisdiction under Article 226 of the [Constitution of India](#), cannot extend its hands to such persons who approach the Court belatedly. In fact, tire Apex Court in several decisions has held that stale claims ought not to be entertained by the High Courts exercising writ jurisdiction under Article 226 of the [Constitution of India](#). The decisions in that regard are as follows:

a) In a recent decision of the Apex Court reported in 2011 AIR SCW 1332 (State of Orissa & Anr. Mamata Mohaniy) the consideration, of an application where delay and laches could be attributed against a person who approaches in a writ petition is discussed by stating that though the Limitation Act 1963 does not apply to wilt, jurisdiction, however, the Doctrine of Limitation being based on public policy, the principles enshrined therein are applicable and writ petitions could be dismissed at the initial stage on the ground of delay and laches.

b) In the case of Shankar Co-op Housing Society Ltd. - Vs M.Prabhakar 81 Ors reported in 20 JI AIR SCW 3033. the Apex Court at para 53 has given the relevant considerations, in determining whether delay or laches in approaching the writ court under Article 226 of the [Constitution of India](#). The same reads as follows:

"53. His relevant considerations, in determining whether delay or laches should be put against a person who approaches the writ court under Article 226 of the Constitution is now well settled. They are. (1) there is no inviolable rule of law that whenever there is a delay, the court must necessarily refuse to entertain the petition; it is a rule of practice based on sound and proper exercise of discretion, and each case must be dealt with on its own facts. (2) The principle on which the court refuses relief on the ground of laches or delay is that the rights accrued to others by the delay in filing the petition should not be disturbed, unless there is a reasonable explanation for the delay, because court should not harm innocent parties if their rights had emerged by the delay on the part of the petitioners. (3) The satisfactory way of explaining delay in making an application under Article 226 is for the petitioner to show that he had been seeking relief elsewhere in a manner provided by law. If he runs after a remedy not provided in the Statute or the statutory rules, it is not desirable for the High Court to condone the delay. It is immaterial what the petitioner chooses to believe in regard to the remedy. (4) No hard and fast rule, can be laid down in this regard. Every case shall have to be decided on its own facts. (5) That representations would not be adequate explanation to take care of the delay."

c) Similarly, the Apex Court in 2010(4) SCC 532 in the case of SAWARAN LATHA AND OTHERS VS STATE OF HARYANA AND OTHERS has held that when the notification under Section 4 of the [Land Acquisition Act, 1894](#) was issued in the year 2001 and the award was passed in the year 2004. writ petitions filed for quashing of the notification in the year 2009 have to be dismissed on the ground of delay as the litigants who dare to abuse the process of the Court in disregard of the law of limitation, delay and laches should.

d) Reference can also be made to another decision of the Apex Court in the case of (1996) 6 SCC 445 STATE OF RAJASTHAN Si OTHERS VS D.R.LAKSHMI Si

OTHERS), wherein it has cautioned the High Court not to entertain the writ petitions where there is inordinate delay while exercising jurisdiction under Article 226 of the [Constitution of India](#).

e) Reliance may be placed on another decision of the Apex Court reported in the case of *M/s. Rup Diamonds and Others v. Union of India and Others* ((1989) 2 SCC 356) wherein the petitioners therein had sought relief in terms of the order passed by the High Court of Judicature at Bombay, for issuance of appropriate writs to the authorities to revalidate the import licence, based on earlier order passed by a learned Single Judge of the Bombay High Court, which was affirmed by the Division Bench of the said Court and also by the Apex Court. It was contended that the petitioners therein were similarly placed and that the petitioners in the earlier cases were granted relief by the Bombay High Court and therefore, the said relief should be given to them also. The petitioners therein had in fact directly filed a writ petition invoking Article 32 of the Constitution before the Apex Court.. The said writ petitions were rejected and the Apex Court declined to interfere in the matter by stating that the petitioners were re-agitating claims which they had not pursued for several years. The petitioners were not vigilant but were content to be dormant and chose to sit on the fence till somebody else's case came to be decided. According to the Apex Court, their case could not be considered on the analogy of one where a law had been declared unconstitutional and void by a court, so as to enable persons to recover monies paid under the compulsion of a law later so declared void. The Apex Court held that there was an unexplained, inordinate delay in preferring the writ petition which was brought a year later. Therefore, the delay in filing the writ petition persuaded the Apex Court to decline to interfere with the case and rejected the writ petition. Even though certain persons were granted reliefs in the matter of import facility, a similar relief was not granted to the petitioners therein by the Apex Court, having regard to the delay and laches in approaching the Court.

(f) Similarly, in the case of *The Municipal Council Ahmednagar Si Anr. vs. Shah Hyder Beig & Ors* [(2002) 2 SCC 48] it has been opined thus:-

"The real test for sound exercise of discretion is the High Court in this regard is not the physical running of such but the test is whether by reason of delay, there is such negligence on the part of the petitioner so as to infer that he has given up his claim or where the petitioner has moved the Writ Court, the rights of the third parties have come into being which should not be allowed to disturb unless there is reasonable explanation for the delay."

g) Similarly, in the case of *Om Prakash v. Union of India* [AIR 2010 SC 10681] the Apex Court declined to grant relief to the petitioners in a matter pertaining to acquisition of land. Intact, in the said case, at Para.86, the Apex Court has observed as follows:-

"Even though the arguments advanced by learned counsel for the appellants appear to be attractive, but on deeper scanning of the same* we are of the opinion that on account of omission of the appellants, they cannot be granted dividend for their own defaults. The appellants should have been more careful, cautious and vigilant to get the matters listed along with those 73 petitions, which were ultimately allowed by the High Court. Not having done so, the appellants have obviously to suffer the consequence of issuance of notifications under Section 4 and further declaration under Section 6 of the Act"

In the said case when a declaration made under Section 6 of the Act was quashed, it was held that it applied only to the persons who had approached the Court and not to those who have gone into slumber. The said observation was made having regard to the scheme of the Act. The Apex Court further observed that after a long distance of time, it would neither be proper nor legally right to grant benefit to the appellants therein, if relief was granted, then it would frustrate the very purpose and scope of the Act. Therefore, it was held that the quashing of the final declaration under Section 6 of the Act could not be extended to the benefit of the appellants therein. The Court took note of the fact that the circumstances or the situation was not the same after such a long delay. The Court also observed that litigants cannot be rewarded on account of their own lapse as they should have been vigilant enough to get their matters also listed along with those in whose favour ultimately judgment was pronounced. Ultimately,

the Apex Court held that in respect of the lands for which neither of the notifications had been quashed, the acquisition would continue to hold good and the acquiring authorities could proceed further. The said observations are squarely applicable to the present case by way of analogy.

In *Sumtibai 61 Others v. Paras Finance Co. Ltd. Partnership Firm* [AIR 2007 SC 3166], it has been observed that judgments of Courts are not to be construed as statutes. The Apex Court quoted Lord Denning as follows:

"Each case depends on its own facts and a close similarity between one case and another is not enough because even a single significant detail may alter the entire aspect in deciding such cases, one should avoid the temptation to decide the cases (as said by Cardozo. J.) by matching the colour of one case against the colour of another. To decide therefore, on which side of the line a case falls, the broad resemblance of another is not at all decisive."

i) In fact in *S.S.Balu and others v. State of Karnataka* {(2Q09) 2 SCC 4791} it has been held that delay defeats equity and that relief can be denied on the ground of delay alone even though relief is granted to other similarly situated persons who approach the courts in time.

26. Having regard to the aforesaid dicta, we are of the view that the Writ Petition has to be dismissed on the ground of delay and laches, having regard to the factual matrix of this case and the nature of reliefs sought by the petitioner.

27. The next contention of respondent No.3 is with regard to the petitioner being guilty on account of suppression of material facts and particulars, which disentitles the petitioner from any relief. In this regard the Respondent's counsel has submitted as follows;

(1) Writ petition alleges that petitioner had applied for Mining Lease in respect of an area of 168 hectares (415 acres) at Subbarayanahalli Village, Sandur Taluka, Bellary District on 01.05.1979 and that the petitioner was granted 'Working Permission' over the said area of 415 acres on 05.01.1980 and that accordingly, the petitioner has been in possession of the whole area of 415 acres right from

05.01 1980. Petitioner has suppressed that its Application dated 01.05 1979 was rejected by the State Government on 11.09.1984.

(2) Petitioner then filed fresh application on 07.08. 1997 for Mining Lease in respect of the same area. This Application was allowed vide Notification dated 27.11.2007 for an area of only 80.93 hectares. These facts have been suppressed by the Petitioner.

(3) Petitioner has made a false statement that there is overlap between the area applied for by the Petitioner and the area granted to Respondent No.3. There is no such overlap.

(4) The petitioner has made a statement that it is in possession of an area of 163.2 hectares because the petitioner has already surrendered an area of 87.07 hectares out of the said area of 163.2 hectares. This fact has been recorded in the letter dated 11.03.1992 issued by the Government. The petitioner has also suppressed this letter.

28. In this context, two decisions in K.D.Sharma v. Steel Authority of India Ltd., and Others (JT 2008 (8) SC 57) and Prestige Lights Ltd. v. State Bank of India [(2007) 8 SCC 449] are apposite. Where an allegation of suppression had been made, the Apex Court after elucidating on the concept: of fraud, at Para. 24 and 26 held as under:-

'4. The jurisdiction of the Supreme Court under Article 32 and of the High Court under Article 226 of the Constitution is extraordinary, equitable and discretionary. Prerogative writs mentioned therein are issued for doing substantial justice. It is, therefore, of utmost necessity that the petition net approaching the Writ Court must come with clean hands, put forward all the facts before the Court without concealing or suppressing anything and seek an appropriate relief. If there is no candid disclosure of relevant and material facts or the petitioner is guilty of misleading the Court, his petition may be distressed at the threshold without considering the merits of the claim.

26. A prerogative remedy is not a matter of course While exercising extraordinary power a Writ Court would certainly bear in mind the conduct of the party who invokes the jurisdiction of the Court If the applicant makes a false statement or suppresses material fact or attempts to mislead, the Court, the Court may dismiss the action on that ground alone and may refuse to enter into the merits of the case by stating 'We will not listen to your application because of what you have done'. The rule has been evolved, in larger public interest to deter unscrupulous litigants from abusing the process Court by deceiving it."

29. In the second case, the Apex Court has observed as under:

"33. It is thus clear that though the appellant company had approached the High Court under Article 226 of the constitution, it said not candidly stated all the facts to the court. The High Court is exercising discretionary and extraordinary jurisdiction under Article 226 of the Constitution. Over and over, a court of law is also a court of equity. It is therefore, of utmost necessary that when a party approaches a High Court, he must place all the facts before the Court without any reservation. If there is suppression of material facts on the part of the applicant or twisted J acts have been placed before the Court, the writ court may refuse to entertain the petition and dismiss it without entering into merits of the matter."

30. In the ease of Dilip Singh v. State of Uttar Pradesh and others 1(2010} 2 SCC 114}. it has been candidly observed that litigants who resort to unethical means by stating falsehood for achieving their goals ought to be deprecated.

31. In the said decision, there is a reference to Welcome Hotel and Ors. v. State of Andhra Pradesh and Ors. etc. [AIR 1983 SC 10151 wherein it has been held that a party which has misled the Court in passing the order in its favour is not entitled to be heard on the merits of the case.

32. We also find while assailing the mining lease in favour of respondent No.3. the petitioner has failed to bring to the notice of this court Annexure-R1 dated 11.09.19S4. Annexure R2 dated 07.08.1997. Annexure-R3 dated 27.1 1.2007 and Annexure R5 dated 11.03.1992. The said documents have been adverted to above which would clearly bring out the fact that the petitioner has no locus standi

to assail the mining lease granted in favour of respondent No.3, as the petitioners applications have been independently considered culminating in the order dated 1.09.1984 and notification dated 27.11.2007 (Annexures-R1 and R3 respectively). Therefore, the contention of the learned counsel for respondent No.3 that there has been suppression of material facts has to be accented.

33. Therefore, we are of the view that the preliminary objections raised by respondent No.3 have to be accepted. Accordingly, the writ petition is dismissed not only on the ground of locus stands of the petitioner to maintain this writ petition, but also on the ground of delay and laches as well as the suppression of material facts which thwart the consideration of the case of the petitioner on merits.

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