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HIGH COURT OF CHHATTISGARH, BILASPUR**Writ Petition (C) No. 801 of 2018****Reserved on 20.11.2019****Delivered on 29.11.2019**

1. Mohitram Patel S/o Jidhan Patel, Aged About 58 Years, R/o Village Kodkel, P.O. Milupara, P.S./Tehsil Tamnar, District- Raigarh, Chhattisgarh
2. Chaitram Patel S/o Jidhan Patel, Aged About 56 Years, R/o Village Kodkel, P.O. Milupara, P.S./Tehsil Tamnar, District- Raigarh, Chhattisgarh

---- Petitioners**Versus**

1. State Of Chhattisgarh Through Secretary, Department Of Revenue And Disaster Management, Mantralaya, Naya Raipur, Chhattisgarh
2. Secretary, Department Of Mineral Resources, Mantralaya, Naya Raipur, Chhattisgarh
3. Collector, District- Raigarh, Chhattisgarh
4. Sub Divisional Officer, (Revenue), Gharghoda, District- Raigarh, Chhattisgarh
5. The Superintendent Of Police, District- Raigarh, Chhattisgarh
6. Hindalco Industries Ltd, Through Its Manager, Gare Palma Coal Block, Village Kodkel, Tamnar Block, District- Raigarh, Chhattisgarh
7. Jayaswal Neco Industries Limited, Through Its Director, Having Registered Office At F-8, MIDC Industrial Area Hingna Road, Nagpur, Maharashtra

---- Respondents

Writ Petition (C) No. 52 of 2018

1. Hemanand Patel S/o Parmanand Patel, Aged About 36 Years, R/o Village Kodkel, P.O. Milupara, P.S. And Tehsil Tamnar, District Raigarh, Chhattisgarh
2. Tirthanand Patel S/o Parmanand Patel, Aged About 34 Years, R/o Village Kodkel, P. . Milupara, P. S. And Tehsil Tamnar, District Raigarh, Chhattisgarh

---- Petitioners

Versus

1. State Of Chhattisgarh Through Secretary, Department Of Revenue And Disaster Management, Mantralaya, Mahanadi Bhawan, Naya Raipur, Chhattisgarh
2. Secretary, Department Of Mineral Resources, Mantralaya, Naya Raipur, Chhattisgarh
3. Collector, Distt. Raigarh, Chhattisgarh
4. Sub Divisional Officer (Revenue), Gharghoda, Distt. Raigarh Chhattisgarh
5. The Superintendent Of Police, Distt. Raigarh, Chhattisgarh
6. Hindalco Industries Ltd. Through Its Manager, Gare Palma Coal Block, Village Kodkel, Tamnar Block, Distt. Raigarh, Chhattisgarh
7. Jayaswal Neco Industries Limited, Through Its Director, Having Registered Office At F-8 MIDC Industrial Area Hingna Road, Nagpur, Maharashtra

---- Respondents

Writ Petition (C) No. 966 of 2018

1. Hariram S/o Late Rupmohan, Aged About 71 Years, R/o Village Kodkel, Tahsil Tamnar, District Raigarh, Chhattisgarh

2. Balakram Patel S/o Late Rupmohan, Aged About 65 Years, R/o Village Kodkel, Tahsil Tamnar, District Raigarh, Chhattisgarh
3. Hemnath Patel S/o Late Rupmohan, Aged About 52 Years, R/o Village Kodkel, Tahsil Tamnar, District Raigarh, Chhattisgarh
4. Manbodh S/o Ramprasad, Aged About 70 Years, R/o Village Kodkel, Tahsil Tamnar, District Raigarh, Chhattisgarh
5. Parmanand S/o Ramprasad, Aged About 66 Years, R/o Village Kodkel, Tahsil Tamnar, District Raigarh Chhattisgarh
6. Dinbandhu Patel S/o Tikait, Aged About 72 Years, R/o Village Kodkel, Tahsil Tamnar, District Raigarh, Chhattisgarh
7. Leelamber S/o Dileshwar Patel, Aged About 32 Years, R/o Village Kodkel, Tahsil Tamnar, District Raigarh, Chhattisgarh

---- Petitioners

Versus

1. State Of Chhattisgarh Through The Secretary, Department Of Revenue And Disaster Management, New Mantralaya Mahanadi Bhawan, New Raipur, Chhattisgarh
2. Collector, Raigarh Chhattisgarh
3. Sub - Divisional Officer (Revenue) Gharghoda, District Raigarh Chhattisgarh
4. Tahsildar Tamnar, District Raigarh Chhattisgarh
5. M/s Hindalco Limited, Through Its Managing Director, Having Office At Block 4/5, Miluparra Coal Mine, Tamnar, Near Jindal Power Plant Raigarh, Chhattisgarh

---- Respondents

For Petitioners : Ms. Sharmila Singhai, Ms. Rajni Soren and Mr. Sanjay Agrawal, Advocates.
For Respondents : Mr. S. Niranjana Reddy, Sr. Advocate, Mr. Jitendra Pali, Dy. A.G., Mr. B. D. Guru, Mr. Rohit Sharma, Mr. Bhaskar Payashi & Mr. Rohitashva Singh, Advocates

Hon'ble Shri Justice P. Sam Koshy

CAV ORDER

1. These are three writ petitions filed by the petitioners assailing the grant of surface right to M/s Jaiswal Neco Industries Ltd. which subsequently has been vested to M/s Hindalco Industries Ltd.
2. Since the facts of all the three writ petitions, the grounds raised, the relief sought for and the respondents against whom relief has been sought for all being same, this Court proceeds to decide these three writ petition by a common order.
3. All the petitioners herein have lands located in revenue circle Tamnar in district Raigarh over which the petitioners have their title and ownership right. The respondents had initially granted a surface right of the lands in village Tamnar which includes the land of the petitioners to M/s Jaiswal Neco Industries Ltd. It is alleged that the said company started open cast coal mining activities in the said land.
4. However, as a consequence of the judgment of the Hon'ble Supreme Court in the case of Manoharlal Sharma Vs. Principal Secretary & Others, 2014 (9) SCC 614 decided on 25.08.2014, which is normally known as the coal block case, the allotment of land to M/s Jaiswal Neco Industries Ltd. stood cancelled. The Union of India thereafter

enacted the Coal Mines (Special Provisions) Rules, 2014 and thereafter the Coal Mines (Special Provisions) Act, 2015. Subsequently, these areas were put to auction again and by virtue of M/s Hindalco Industries Ltd. being the highest bidder, the mining lease has been vested and assigned to M/s Hindalco Industries Ltd. on the land which originally was allotted to M/s Jaiswal Neco Industries Ltd.

5. The main contention of all the petitioners in the instant case is that the allotment of surface right itself to M/s Jaiswal Neco Industries Ltd. at the first instance was illegal inasmuch as there was a complete violation of the provisions of the Chhattisgarh Land Revenue Code, 1959. The action or the order granting surface right to M/s Jaiswal Neco Industries Ltd. was with total non-compliance of the mandatory requirement as is envisaged under Section 247 (3) of the Chhattisgarh Land Revenue Code. According to the petitioners, the Govt. had assigned its right over the lands belonging to the petitioners to the private companies without their knowledge and consent. At the same time, there is a clear failure on the part of the respondents in not complying with the conditions precedent required to be complied with by the respondents under the Land Revenue Code. Thus, the entire action on the part of the respondents in assigning the surface right to the private companies is per se illegal and bad in law.
6. According to the petitioners, at no point of time were the petitioners intimated in respect of the said issuance of surface right in favour of M/s Jaiswal Neco Industries Ltd. and an award has also been passed

on 19.04.2012 behind the back of the petitioners. According to the petitioners, though compensation has been determined in favour of the petitioners but the same has been determined without making the petitioners a party to the proceedings and the petitioners have also not accepted or received the compensation till now.

7. Assailing the action on the part of the respondents the petitioners also supported their contentions from the correspondence that they have received from the office of Village Kotwar, Gram Panchayat as also from the office of the Tahsildar, Tamnar giving information that no such instruction has been received from the State Govt. at the office of the Tahsil, Tamnar, district Raigarh nor was any such information received at the level of Gram Panchayat neither was any notice published in any of the daily newspaper in respect of the said proceedings nor was any such notice affixed at any of the conspicuous locations. This according to the petitioners further strengthens the contention of the petitioners that the granting of surface right to M/s Jaiswal Neco Industries Ltd. is therefore bad in law.
8. It was the further contention of the petitioner that the only document which is being relied upon by the respondents to support their action is the so called proclamation made on 02.05.2011 Annexure P-2. According to the petitioners, the law does not require for issuance of a proclamation for the purpose of grant of surface rights to a company for mining activities. It is also contended that mere issuance of a proclamation also would not or cannot be accepted to be the compliance of the statutory requirements enacted by the Government for the purpose. Even otherwise, the said proclamation also does not disclose of a Gram Sabha of having been

convened as contended earlier the so called proclamation has not been received by any of the authorities at the grass root level where the property situates that is at the office of the concerned Tehsildar or for that matter in the office of the Village Kotwar or even in the office of the Gram Panchayat. The fact that it has not been circulated at the local level is sufficient to draw an inference that necessary publication showing the intention of State Government was not made public. Thus the action is bad in law.

9. Moreover, according to the petitioners the application of the provisions of Section 247 has to be implemented at individual level and it does not have a requirement of a collective application. Further ground of challenge is that the plain reading of the proclamation by itself would mean that it was for the purpose of determining the compensation to be bad and it was not meant for the purpose of grant of Surface Right. It was also contended that proceedings drawn for the authority would itself show that the proclamation has been published on the same day on which the proceedings for issuance of a proclamation was made which itself is sufficient indication of the entire action being done in haste and in the process the mandatory statutory requirement have been given a go by. It was also the contention of the petitioner that the alleged Gram Sabha meeting which is said to have been held would not have any force of law as it did not have the quorum required under the Act and Rules for holding the Gram Sabha meeting for the said purpose.

10. Per contra, the contention of the respondents is that the present writ petition at the outset deserves to be rejected applying the doctrine of delay and laches. According to the respondents the award in the instant case has passed as early as on 19.04.2012 and all these writ petitions have been filed after about 6 years i.e. in the year 2018. According the respondents the petitioners had ample knowledge of the proceedings drawn by the

respondents in respect of the acquiring of the land. It was further the contention of the petitioner that from among the present petitioners in the three writ petitions there are a couple of petitioners who had appeared and whose name of having appeared in the Gram Sabha meeting that was held on 07.07.2011. Therefore it is hard to believe that petitioners were not aware of the such proceedings drawn, particularly, when there is an allegation against Messers Jaiswal Nico of having started mining activities also in the said land. Moreover, it was also contended that now surface rights as well as mining rights have already been awarded in favour of the private respondents, there is not much left for this Court for adjudication and if at all if there can be any relief or grievance which the petitioner can now have, is as to whether the compensation awarded is adequate or fair compensation. An appropriate reference case before the concerned authority can be moved by the petitioner which again the petitioners have not claimed till now. It was further the contention of the respondents that in all the private respondents have got around 174 Hectares of land for mining purpose and total land belonging to the petitioners in the three writ petitions is roughly around 12 Hectares of land which is far less even 10% of the total land acquired by the private respondents. According to the respondents, the land of the Villagers who are opposing the acquisition of property by the respondents is too negligible for declaring the entire proceedings of grant of surface right and mining right to be bad in law. According to the respondents even otherwise the only remedy now left for the petitioners is for claiming of the compensation for the reason that the land belonging to the petitioner villagers are in different pockets or have become island for the reason that, the land surrounding the properties of the petitioners have all been acquired by the private respondents and over which there is no dispute by the concerned land owners that stand finally vested with the respondents.

Hence, it is all the more necessary for the petitioners to give up their challenge to the grant of surface right and mining right to the private respondents. The respondents also led their arguments stressing upon the proclamation dated 02.05.2011 and the proceedings drawn thereon and also Gram Sabha resolution dated 07.07.2011. According to the respondents the resolution dated 07.07.2011 of the Gram Sabha would show the presence of the Chief Executive Officer of the Janpad Panchayat, Secretary of the Gram Panchayat as also the Sarpanch of the Gram Panchayat thereby there being clear representation of all the concerned while passing of the resolution.

11. It was the further contention of the respondents that the provisions of the Mines and Minerals Development and Regulations Act, 1957 (in short, the Act, 1957) and the rules framed therein and also the subsequent Mining Laws that have been framed has made the provision of Section 247 (3) of the Chhattisgarh Land Revenue Code, 1959 (in short, the Code) inconsequential. The counsel for the respondents refers to the judgment of MP High Court in case of Premchand, Sugnichand & Others Vs. State of Madhya Pradesh and others, AIR 1965 MP191 to substantiate their contention that merely because of non compliance of the provisions of Section 247 (3) of the Code by itself would not vitiate the proceedings in respect of grant of surface right. The respondents also relied upon the subsequent judgment again rendered by the MP High Court in case of Shyam Bihari & Others Vs. State of MP, 2008 (4)MPHT 151. In addition, the respondents relied upon May George Vs. Special Tahsildar & Others, 2010 (13)SCC 98, Sawaran Lata & Others Vs. State of Haryana & Others, 2010(4)SCC 532, Aparn Gramin Vikas Sanstha Samiti Society, Ashoknagar Vs. State of MP & Others, 2013(3)MPLJ74 and again the recent judgment of the same MP High Court in Laltadhar Dwivedi Vs. State of MP & Others,

WP No.6163 of 2017 decided on 16.08.2017.

- 12.** Lastly, the respondents referring to the Coal Mines (Special Provisions) Rules, 2014 in short ' Rules of 2014' and Coal Mines (Special Provisions) Act, 2015 (in short, the Act, 2015) submitted that these provisions enacted in the year 2014 and 2015 now has an overriding effect against all other laws that are in force for the time being and at the same time the contention of the respondents was that there is a total immunity provided under Section 14 of the Act, 2015 and thus prayed for rejection of these writ petitions.
- 13.** Having heard the contentions put forth on either side and on perusal of records, some of the admitted factual position as it stands is that, NECO was in the year 2011-12 awarded surface right for mining activities at Tehsil Tamnar, District Raigarh. NECO was awarded approximately 174 Hectares of land. NECO was also allotted this land for the purpose of excavation of coal. The allocation of coal blocks to NECO and other Coal Blocks by the Central Government during the period 1993 to 2011 came under challenge before the Supreme Court and the Supreme Court in case of Manohar Lal Sharma Vs. Principal Secretary Govt. of India and Others, 2014(9)SCC 614, declared all allocations of coal blocks to be arbitrary and illegal and in the process the allotment of coal blocks to NECO got cancelled and in terms of the directions given by the Supreme Court, the government in the light of the Rules of 2014 and the Act of 2015 conducted fresh bidding in which HINDALCO being the highest bidder was allocated the said land for mining activities and mining rights were also issued in favour of HINDALCO.
- 14.** Another aspect which needs consideration is that, out of 174 Hectares of land over which surface right has been issued to the private respondents in these writ petitions, there is no dispute in over 162 Hectares of land of the villagers in these villages who owned this 162 Hectares of land. They, without any objection have accepted the compensation so awarded by the

State Govt. in respect of their respective lands which were affected in the course of allotment of surface right.

- 15.** The dispute revolving three writ petitions herein is only about 12 Hectares of land which is much less than 10 percent of the total land over which the surface right has been granted and therefore the dispute is only in respect of a negligible portion of land. If the contentions of the petitioners are to be believed, the land of these petitioners are in small patches and pockets forming an island surrounded by the lands which has already been acquired and over which there is no dispute.
- 16.** This court while entertaining the writ petitions had granted certain interim reliefs to the petitioners and that interim relief was confined only upon the property of the petitioners and is not in operation in respect of the property which is owned by the others who have not questioned or challenged.
- 17.** Coming to the legal provision as it stands, undoubtedly the area and the land in question is one over which the provisions of the Code is applicable. There is also no dispute of the fact that the petitioners are infact “Bhumi Swamis” of the land which are referred to in the three writ petitions. Section 247 of the Code specifically envisages that right to all minerals, mines and quarries shall vest with the State Govt. unless otherwise expressly provided by the terms of grant made by the Govt. The said section also lays down as to the procedure to be followed and the duties casted upon the government to be complied with in the event the government assigns to any person the right over any minerals, mines or quarries. There are certain provisions which are also framed taking into consideration the interest of persons or the owners of the land over which rights are being assigned to any other person for the purpose of extracting minerals.
- 18.** The Chhattisgarh Land Revenue Code, 1959 in Chapter-IV Section 57 deals with the ownership of the lands under the State Government and

Section 57 clearly envisages that the Government would be the exclusive owner of the minerals, which are embedded, even under the lands, which are privately owned. For ready reference Section 57(i) of the Land Revenue Code is reproduced herein as under:-

“57 (i) Whether under Section 247 of the M.P. Land Revenue Code, 1959 for assignment of the right by the Government to any person in respect of land of which surface right vests in third person, the consent of land owner (Bhumiswami) is necessary? Any grant by the Government without any consent of such Bhumiswami is sustainable under the law?”

19. The plain reading of the aforesaid provisions clearly reflects that all lands including the standing or flowing water, mines, quarries, minerals etc. and all rights in the subsoil of any land are the properties of the State Government. Thus, in other words, all the minerals which stands embedded in the land in a State, even if be a private land owned by an individual. the right to all such minerals stands vested with the State Government and the Land Revenue Code also empowers the State Government to have all powers necessary for the proper enjoyment of such rights.

20. For ready reference, the relevant portion of Section 247 of the Code is reproduced herein under :

247. (1) Unless it is otherwise expressly provided by the terms of a grant made by the Government, the right to all minerals, mines and quarries shall vest in the State Government which shall have all powers necessary for the proper enjoyment of such rights.

(2) The right to all mines and quarries includes the right of access to land for the purpose of mining and quarrying and the right to occupy such other land as may be necessary for purposes subsidiary thereto, including the erection of offices, workmens dwellings and machinery, the stacking of minerals and deposit of refuse, the construction of roads, railways or tram-lines, and any other purpose which the State Government may declare to be subsidiary to mining and quarrying.

(3) If the Government has assigned to any person its right over and minerals, mines or quarries, and if for the proper enjoyment of such

right, it is necessary that all or any of the powers specified in sub-sections (1) and (2) should be exercised, the Collector may, by an order in writing, subject to such conditions and reservations as he may specify, delegate such powers to the person to whom the right has been assigned:

Provided that no such delegation shall be made until notice has been duly served on all persons having rights in the land affected, and their objections have been heard and considered.

(4) If, in the exercise of the right herein referred to over any land, the rights of any person are infringed by the occupation or disturbance of the surface of such land, the Government or its assignee shall pay to such persons compensation for such infringement and the amount of such compensation shall be calculated by the Sub-Divisional Officer, or, if his award is not accepted, by the Civil Court, as nearly as may be, in accordance with the provisions of the Land Acquisition Act, 1894 (1 of 1894).

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Explanation. In this section, minerals include any sand or clay which the State Government may declare to have a commercial value or to be required for any public purpose.”

21. Plain reading of Sub Section 3 of Section 247 of the Code, particularly the proviso to the said sub section, it clearly reflects that there is a requirement of notice to be duly served on all the persons having right over the land which is going to be affected in the course of assigning any right to any other person. It is also the requirement under the said provision to consider and decide the objections, if any, filed by any of the original land owners whose land would be affected. In fact, all the petitioners before this Court have also confined their challenge to the grant of surface right to NECO and harping only on the non compliance of the requirement of law as envisaged under the proviso to Sub Section 3 of Section 247 of the Code.

22. The State counsel in their reply have relied upon the proclamation made by it on 02.05.2011 (Annexure R/1) to meet the requirement of law as

envisaged under Section 247 of the Code. In addition, the State Govt. also relied upon the resolution of the Gram Sabha dated 07.07.2011 (Annexure R/2) to show that the Gram Sabha has also resolved unanimously in respect of their willingness for grant of surface right to the private respondent-companies and thereafter the SDO in terms of the provision of law assessed the compensation for the entire land over which surface rights were being granted to Jaiswal NECO and quantified the compensation of Rs.37,81,96,830/-. The concerned company is said to have also deposited the entire compensation amount in the account of land acquisition officer. Subsequently, as a consequence of the directions of the Supreme Court in case of Manohar Lal Sharma (Supra), the Government vide its order dated 23.05.2015 ordered for vesting of the said coal block in favour of HINDALCO. The proclamation made on 02.05.2011 is reproduced herein:

“न्यायालय अनुविभागीय अधिकारी, (राजस्व) घरघोड़ा, जिला रायगढ़

राजस्व प्रकरण क्रमांक 6/अ-67/2010-11

ग्राम बाजीखोल एवं अन्य ग्राम तहसील, तमनार

उद्घोषणा-पत्र

मेसर्स जायसवाल निको इण्डस्ट्रीस लिमि० बाजीखोल को शासन द्वारा नीचे लिखे ग्रामों की निजी भूमि पर खनि पट्टा स्वीकृति के फलस्वरूप उक्त भूमि से खनिज कोयला उत्खनन हेतु छ०ग०भू०रा०सं० की धारा 247 के तहत सरफेस राईट (प्रतिकर का निर्धारण) किया जाना प्रस्तावित है।

विवरण

1. बाजीखोल	54.651 हे०
2. कोडकेल	104.754 हे०
3. बालजोर	15.205 हे०

कुल 174.610 हे०

अतएव एतद् द्वारा सर्व संबंधित को सूचित किया जाता है कि इस संबंध में जिस किसी का किसी प्रकार की उजर/आपत्ति हो तो मेरे न्यायालय में दिनांक 23.05.2011 को स्वयं या अधिकृत प्रतिनिधि के माध्यम से लिखित में दो प्रतियाँ प्रस्तुत कर सकते हैं। नियत तिथि के बाद प्राप्त दावा/आपत्ति पर किसी प्रकार की सुनवाई नहीं की जावेगी।

आज दिनांक 02.05.2011 को न्यायालयीन पदमुद्रा अंकित कर जारी किया गया।

टीप—आवेदित भू-खण्डों की विस्तृत विवरण एवं अन्य जानकारी कार्यालय में देखा जा सकता है।

अनुविभागीय अधिकारी,
(राजस्व) घरघोड़ा''

23. The later part of the aforesaid proclamation clearly reflects that the authorities concerned had vide the said proclamation called upon objections by 02.03.2011. Likewise, if we look into the document Annexure R/2 it also reflects that the said Gram Sabha meeting held on 07.07.2011 pursuant to which the resolution was passed also was confined exclusively in respect of the decision of the respondents in granting surface right to NECO. That from among the persons who had attended Gram Sabha, except very few, the majority of the persons had not opposed grant of surface right and couple of signatories to the said resolution also are the petitioners herein. The fact that couple of signatories to the resolution dated 07.07.2011 of the Gram Sabha convened by the Gram Panchayat Kodkel, Tehsil Tamnar District Raigarh are petitioners, is not disputed by the petitioners. The fact that couple of petitioners admittedly were present in the Gram Sabha meeting held on 07.07.2011 is a sufficient indication to draw an inference that the villagers were infact informed of the action of the State Govt. in their decision to grant surface right to NECO.

24. It is therefore also hard to believe that the petitioners were not aware of the decision of the State Govt. in grant of surface right to NECO. The reason for not believing the contention of the petitioners is the fact that, of the 174 Hectares of land over which surface right was granted to the said company in the year, 2011, there has been no objection or hindrance created by any of the land owners for an area of approximately 162 Hectares which consists of more than 90 percent of land over which the right was given to NECO and over which the said company had also taken possession and had started their mining activities.

- 25.** It is also hard to believe that couple of petitions who were present in the Gram Sabha meeting held on 07.07.2011 would not have apprised the other persons in respect of Gram Sabha resolution or the intention of the State Govt. What is all the more pertinent is that, the said couple of petitioners who had participated in the Gram Sabha meeting on 07.07.2011 did not specifically object to the decision of the State Govt, neither did any of them challenge the resolution promptly.
- 26.** A plain perusal of the resolution, reveals that the grievance of the most of the villagers were for providing sufficient facilities in the village and also for grant of more compensation than what has been assessed by the SDO and also in respect of their demand for grant of employment in lieu of their lands over which surface right was being given to the private company for mining operations.
- 27.** Given the aforesaid circumstances, it appears that there is definitely a great element of laches of delay on the part of the petitioners in approaching the court, inasmuch as, the petitioners have approached the court only in the year, 2018 i.e. almost 7 years after the surface right was issued in favour of NECO and also almost 3 years after the mining right was granted in favour of HINDALCO.
- 28.** It would be relevant at this juncture to refer to the judgment of the Division Bench of the Madhya Pradesh High Court in the case of **“Shyam Bihari Singh & Ors.”** (supra) wherein the Division Bench has held that after the enactment of the MMDR Act, 1957 by the Parliament the question, whether the consent of the owner of private land is or is not required, has to be decided under the provisions of the Act of 1957 and not in accordance with the provisions of Section 247 of the Land Revenue Code, 1959. The High Court was of the view that the Act of

1957 framed by the Parliament was in terms of Entry 54 of List-1 of the 7th schedule read with Article 246 of the Constitution of India, wherein the Parliament has been given the power to make law on regulation of Mines and Minerals Development expedient to the public interest. Dealing on the issue and referring to a earlier decision of the Madhya Pradesh High Court in the case of “**Premchand v. State**” (supra), the High Court in the case of Shyam Bihari held as under:-

“In the result, we answer the questions referred to us as follows:

- (i) The Division Bench in Premchand v. State (supra) based on Section 247 of the M.P. Land Revenue Code, 1959 is not applicable to grant of mining leases after the enactment of Mines and Minerals (Development and Regulation) Act, 1957 and the rights of the lessee and the owner of the private land in respect of which the mining lease is granted will be governed by the provisions of the 1957 Act and the 1960 Rules made thereunder.**
- (ii) The consent of the owner of the private land or opportunity of hearing to such owner of the private land is not mandatory for grant of a mining lease under the Mines and Minerals (Development and Regulations) Act, 1957 and the grant of mining lease by Government without such consent or opportunity of hearing is sustainable in law.”**

29.The Hon'ble Supreme Court in the case of “**May George v. Special Tahsildar and Ors.**” (2010) 13 S.C.C. 98 in paragraphs No. 8 & 9 held as under:

“8. Land measuring 30.80 acres stood notified and acquired. The land consisted of large survey numbers and belonged to a large number of persons. It is not the case of the appellant that Notification under Section 4 and Declaration under Section 6 were not published or given publicity as mandatorily required under the law. Once, Award was made and possession had been taken, land stood vested in the State free from all encumbrances, it cannot be divested even if some irregularity is found in the Award. As huge area of land had been acquired for planned development of industrial town, the land of the appellant cannot be exempted on any ground whatsoever.

More so, appellant's land was of negligible area in comparison of the total land acquired and therefore, at the behest of only one person, the acquisition proceedings cannot be disturbed.

9. Admittedly, acquisition proceedings/Award have been challenged at a belated stage after a decade of taking possession of the land in dispute. In the facts and circumstances of this case, it is difficult to presume that appellant had no knowledge of the acquisition proceedings.”

30. A similar view was also taken by the Hon'ble Supreme Court in the case of **“Sawaran Lata and Ors. v. State of Haryana and Ors.”**

(2010) 4 S.C.C. 532 wherein again in paragraph No. 10, the Hon'ble

Supreme Court reiterated the aforesaid principle as under:

“10. Similar view has been reiterated in State of Rajasthan and Ors. v. D.R. Laxmi and Ors. (1996) 6 SCC 445, wherein this Court has held that even the void proceedings need not be set at naught if the party has not approached the Court within reasonable time, as judicial review is not permissible at a belated stage. This Court held as under:

9. ...Delay in challenging the notification was fatal and writ petition entails with dismissal on grounds of laches. It is thus, well-settled law that when there is inordinate delay in filing the writ petition and when all steps taken in the acquisition proceedings have become final, the Court should be loathe to quash the notifications....

10. The order or action, if ultra vires the power, becomes void and it does not confer any right. But the action need not necessarily be set at naught in all events. Though the order may be void, if the party does not approach the Court within reasonable time, which is always a question of fact and have the order invalidated or acquiesced or waived, the discretion of the Court has to be exercised in a reasonable manner. When the discretion has been conferred on the Court, the Court may in appropriate case decline to grant the relief, even if it holds that the order was void. The net result is that extraordinary jurisdiction of the Court may not be exercised in such circumstances.

Similar view has been reiterated by this Court in **Northern Indian Glass Industries v. Jaswant Singh and Ors. AIR 2003 SC 234**; and **Haryana State Handloom & Handicrafts Corporation Ltd. v. Jain School Society, AIR 2004 SC 850.”**

31. It would be also relevant at this juncture to refer to a recent judgment of the Division Bench of Madhya Pradesh High Court in the case of **“Laltadhar Dwivedi v. State of Madhya Pradesh” WP No. 6163/2017 decided on 16.08.2017**. The relevant portion of the said judgment dealing with the issue involved in the present case is paragraphs No. 4 & 5, which for ready reference is reproduced herein under:

“4. There is no challenge to the findings recorded by all the authorities , wherein it has been found that the petitioner has carried out illegal mining without following the provisions of Section 247 of the M.P. Land Revenue Code and also the Rules 1996. The issue raised by the petitioner that since it is a private land, therefore, the provisions of Section 247 could not have been invoked is no longer res integra and this issue has been examined by the Division Bench of this court in the case of Shyam Bihari Singh Vs. State of M.P. and others, 2008(4)MPLJ 255. The provisions of Sections 57 and 247 of the Code were considered by the Division Bench of this court in the case of Shyam Bihari Singh (Supra). Specific two questions were referred to the Division Bench as under :

- (i) Whether under section 247 of the M.P. Land Revenue Code, 1959 for assignment of the right by the Government to any person in respect of land of which surface right vests in third person, the consent of land Owner (Bhumiswami) is necessary? Any grant by the Government without any consent of such Bhumiswami is sustainable under the law?.**
- (ii) Whether the Division Bench in Premchand (supra), has rightly held that for assignment of rights in respect of any minerals, mines and quarries by the Government to a third person under Section 247 of the Code, an opportunity of hearing or consent of the Bhumiswami is not required?**

The said question was answered in the said case that the right over the minerals in respect of which a mining lease can be granted is vested in the State by virtue of section 57 read with section 247 of the Code. Accordingly, the State is owner of the minerals lying beneath even on a private land and as the owner of such minerals, the State can grant a lease in favour of a lessee by way of transfer or assignment. Neither Section 10 of the 1957 Act nor Rule 22 of Mineral Concession

Rules, 1960 lays down anywhere that a mining lease in respect of minerals vested in the Government where the surface land belongs to a private person cannot be granted without prior consent of the owner of such private land. In the absence of such clear statutory provisions, either in the 'Act 1957' or in the 1960 Rules, the State Government as the owner of the minerals can grant a mining lease in favour of a lessee without the consent of the owner of a private land, even where the minerals are embedded in such private land.

5. Learned counsel for the petitioner referred the judgment passed in the case of **Trilokinath Agrawal Vs. State of M.P. And others**, I.L.R.(2013) MP 2331. However, in the case of **Trilokinath Agrawal (supra)**, the Division Bench himself referred in para-8 that the issue regarding consent of **Bhumiswami** for grant of mining lease was not pleaded nor agitated. It is also mentioned that the grounds which were not raised before the writ court does not arise for consideration, as there is no foundation in the writ petition. In the said case the issue regarding consent of the **Bhumiswai** before grant of mining lease under section 247 was not directly in issue. However, in the case of **Shyam Bihari Singh(supra)** on a reference by the learned Single Bench, the Division Bench has specifically answered this question and held that no consent of the **Bhumiswami** is required before grant of the mining lease and no opportunity of hearing is required to be afforded to the **Bhumiswami**. It is further decided in the said case that the consent of the owner is required "for starting mining operations" and not for grant of mining lease as held in para-13 and therefore, before entering into the land and using the surface of the said land, the consent of the owner is required and the entry on the land for mining operations is subject to payment of the amount of compensation."

32. So far as the judgment which have been relied upon by the learned counsel for the petition i.e. **2011(10) S.C.C. 714 (J and K Housing Board and Ors. v. Sanjay Krishan Kaul and Ors.)** and **1997(4) S.C.C. 559 (Pallava Granites Industries India (P) Ltd. v. Government of Andhra Pradesh and Ors.)** are concerned, both these two judgments have been decided under entirely different contextual background and were not being dealt with, qua the provisions of the Chhattisgarh Land Revenue Code or any other

similar law applicable in the two States from where the dispute arose and reached to the Hon'ble Supreme Court. Therefore the two judgments referred to are distinguishable on facts itself and the writ petitions, thus being devoid of merits deserves to be and are accordingly dismissed.

33. It is however made clear that the dismissal of these writ petitions would not preclude the petitioners from approaching the authorities for compensation of the land to each of the petitioners owned and the rights of which have been handed over to the private respondents-companies for mining activities.

34. The petitioners are also not precluded of their right to seek enhancement of compensation, if they are not satisfied with the quantum of compensation determined by the Sub-Divisional Officer and for this their rights stand reserved for approaching the competent authority under the law for redressal of their grievance.

35. With the aforesaid observations, all the three writ petitions stand dismissed.

**Sd/-
(P. Sam Koshy)
Judge**