

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.11678 of 2023

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M/s Balaji Enterprises a Proprietorship Firm having its Registered Office at Babu Bazar, Ara, Bhojpur through its Signing Authority Sri. Chandan Kumar, aged about 35 years, Gender- Male, Son of Sri Ashok Kumar, resident of Village and Post Pareo, P.S. Bihta, District- Patna- 802160.

... ... Petitioner/s

Versus

1. The State of Bihar through the Chief Secretary, Government of Bihar, Old Secretariat Building, Patna.
2. The Additional Chief Secretary-cum- Commissioner Mines, Department of Mines and Geology, Government of Bihar, Vikas Bhawan, Bailey Road, Patna.
3. The District Magistrate, Sheikhpura.
4. The Mineral Development Officer, Sheikhpura.

... ... Respondent/s

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Constitution of India---Article 19(1)(g), 19(6), 48A, 51A(f), 51A(g)--- The Bihar Minerals (Concession, Prevention of Illegal Mining, Transportation & Storage) Rules, 2019---Rule 28---Indian Contract Act, 1872---section 74--- Mines and Mineral Contract---Environmental Impact Assessments of mining activity---petitioner participated in bidding process for settlement of stone block and was declared highest bidder and the LOI was issued, Mining Plan was approved and petitioner was required to furnish environmental clearance as well as other documents and deposits for execution of mining lease--- settlement granted in favour of petitioner was annulled on ground of delay and laches that even after lapse of 05 years and 03 months, petitioner failed to produce the Environmental Clearance and earnest money to the tune of Rs.2,90,00,000/- was forfeited and the order was affirmed on appeal---hence

the present writ---argument on behalf of petitioner that due to failure on part of the authorities concerned i.e. Department of Mines, in providing the geo-coordinates of the proposed mining site, the environmental clearance could not be obtained by petitioner from State Environmental Impact Assessment Authority (SEIAA) in the required time, as SEIAA could not have issued environmental clearance without specifying the geo-coordinates---Respondents countered by submitting that since the petitioner failed to furnish 'Environmental Clearance' even after lapse of about 05 years and 03 months from the date of in principal approval in petitioner's favour, the annulment of 'Principal Approval' and forfeiture of security deposit is justified.

Held: despite there being delay and latches on part of the petitioner, the respondents too erred in not issuing the geo coordinates of the concerned Stone Block in the District Survey Report (DSR), which also added to the duration of delay in obtaining environmental clearance---geo-coordinates play a vital role in the environmental clearance process for mining projects by providing accurate spatial information that is essential for assessing environmental impacts, planning operations, ensuring regulatory compliance, and promoting sustainable mining practices---DSR is required to be prepared before the auction/e-auction/grant of mining lease by Mining Department or Department dealing with mining activity---Petitioner's application for grant of Environmental Clearance Certificate has been kept pending by the department due to want of geo-coordinate details in DSR---the contract for mining lease did not come into existence and the security deposit in the tune of Rs. 2,90,00,000/- could not be forfeited when the transaction fell through for no fault on part of the petitioner---impugned order set aside and quashed---competent authority-cum-District Magistrate directed to finalize the DSR and, thereafter, extend the time and issue work order followed by final settlement of the contract of lease within a period of six weeks from the date of order---writ petition disposed of. (Para 14, 22, 23, 28, 31, 32, 38, 48-50)

(2006) 11 SCC 582, (2008) 2 SCC 222, (2012) 4 SCC 629, (2021) 9 SCC 166, (1997) 3 SCC 398, (1997) 7 SCC 251, (1998) 1 SCC 572, (1996) 10 SCC 405, (2003) 5 SCC 413, (2022) 2 SCC 201, (2007) 1 SCC 228Relied Upon.

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3. The District Magistrate, Sheikhpura.
4. The Mineral Development Officer, Sheikhpura.

... .. Respondent/s

Appearance :

For the Petitioner/s : Mr. Suraj Samdarshi, Advocate
Mr. Jai Vardhan Narayan, Advocate
For the Mines Department: Mr. Naresh Dixit, Spl. P.P. Mines
For the State : Mr. Gyan Prakash Ojha (GA- 7)

CORAM: HONOURABLE MR. JUSTICE PURNENDU SINGH
C.A.V. JUDGMENT

Date : 02-05-2024

Heard Mr. Suraj Samdarshi alongside Jai Vardhan Narayan, learned counsel appearing on behalf of the petitioner, Mr. Gyan Prakash Ojha, learned GA-7 appearing on behalf of the State and Mr. Naresh Dixit, learned Spl. P.P appearing on behalf of Mines Department.

2. The petitioner has prayed for following relief(s) in



paragraph no. 1 of the writ petition:

“I. Issuance of directions, orders or writs in the nature of certiorari setting aside the order dated 14.07.2023 passed by the Mines Commissioner, Department of Mines and Geology, Bihar in Appeal No. 01/2023 whereby and whereunder the Appeal filed by the petitioner against the order dated 23.01.2023 passed by the Collector, Sheikhpura was rejected and the order passed by the Collector, Sheikhpura was upheld cancelling the principal approval vis a vis Letter of Intent (LOI) for stone Block No. 27 situated at Mauza Hazaratpur Mandro Chandi, Thana Sheikhpura, District-Sheikhpura in an utmost arbitrary manner against the spirit of Rule 28 of the Bihar Minerals (Concession, Prevention of Illegal Mining, Transportation & Storage) Rules, 2019 without appreciating the fact that the petitioner had taken all necessary steps for grant of Environmental Clearance and is not responsible for delay in execution of the formal lease and a security deposit in the tune of Rs. 2,90,00,000/- (Two Crore Ninety Lakh) has also been ordered to be forfeited and the Collector, Sheikhpura has further been directed to take necessary steps for re-auction of the Stone Block No. 27 situated at Mauza Hazaratpur Mandro Chandi, Thana Sheikhpura, District-Sheikhpura as per the present applicable rules and regulations.

II. Issuance of directions, orders or writs in the nature of mandamus directing the respondents not to annul the settlement of Block Stone of the petitioner firm by cancelling the Principal Approval vis a vis Letter of Intent (LOI) for Stone Block No. 27 situated at Mauza Hazaratpur Mandro Chandi, Thana Sheikhpura, District-Sheikhpura and allow the petitioner to submit the environmental clearance, payment of instalments and other payments and all other necessary documents so that Form B be executed in between the Petitioner and the Respondent in accordance with law.

III. Any other relief or reliefs for which the petitioner may be deemed entitled to.”

BRIEF FACTS

3. The petitioner is a proprietorship firm registered under the Ministry of Micro, Small and Medium Enterprises having (Registration No. UDYAM-BR-08-0002321) and is running in the name of M/s Balaji Enterprises,

4. Pursuant to a Notice Inviting Tender (NIT)



issued under the seal and sign of the District Magistrate, Sheikhpura for settlement of 9 Stone Blocks, the petitioner had participated in the auction proceeding conducted on 18.03.2017, in which, he was declared the highest bidder for Stone Block No. 27, situated at Mauza Hajratpur, Mandro Chandi appertaining to Khata no. 296 and Plot No. 2068 (P) areas 12.50 acres at District Sheikhpura, at a highest bidding amount of 29 crores.

5. A Letter of Intent (LOI) vide Letter No. 783 dated 21.09.2017, was issued in favour of the petitioner by the District Magistrate, Sheikhpura. As per the terms and conditions of the Letter of Intent (LOI), the Stone Block was settled in favour of petitioner for 5 years from the date of execution of lease deed. Further, the petitioner was required to make payment of 10% of the bid amount as security deposit, submission of Form B within 120 days from the date of LOI, mining plan, environmental clearance and other payments as per the LOI (Annexure -P2). However, Environmental Clearance could not be granted due to non submission of DSR.

6. It is the specific case of the petitioner that the District Magistrate, Sheikhpura has passed order contained in Memo No. 73 dated 23.01.2023, annulling the “In Principal



Approval” granted in favour of the petitioner for Stone Block No. 27 situated at Mauza Hajratpur, Mandro Chandi appertaining to Khata no. 296 Plot No. 2068 (P) measuring areas 12.50 acres at District Sheikhpura and the earnest money in the tune of Rs.2,90,00,000/- was directed to be forfeited (Annexure- P23). It was rejected on the ground that there has been delay of five years and three months on the part of the petitioner.

7. Aggrieved by the order of the District Magistrate, Sheikhpura dated 23.01.2023, the petitioner preferred statutory appeal before the Commissioner of Mines, Bihar and vide order dated 14.07.2023 passed in Appeal No. 01/2022, the Commissioner Mines has rejected the appeal filed and upheld the order of the DM, Sheikhpura. Further, the Commissioner issued direction to the DM, Sheikhpura for arranging a re-auction of the Stone Block. (Annexure- P24)

SUBMISSIONS

8. Learned counsel for the petitioner submitted that LOI was issued on 21.09.2017. The petitioner, vide letter dated 10.08.2018 (Annexure- P4) had requested the Mineral Development Officer, Sheikhpura for inspection of the disputed Stone Block No. 27, situated at Mauza Hajratpur, Mandro



Chandi appertaining to Khata no. 296 and Plot No. 2068 (P) areas 12.50 acres at District Sheikhpura by the Circle Officer, Ariari and for a report thereto on six issues that were required to be answered and inquired into.

i. Whether the applied area is recorded as *pahad* and *gair majarua* in the column of type and Khata respectively in the revenue records of the Government?

ii. Whether the applied area comes within the schedule area or not?

iii. Whether the applied area is a forest land or not?

iv. Whether any river, educational institute, hospital exists within 500 meters of the applied area?

v. Whether any archaeological structure of national importance exists within 500 meters of the applied area?

vi. Acreage and type of applied area?

9. Reminder applications were also sent to the department by the petitioner vide letter dated 22.09.2018 and 17.07.2019. (Annexure- P4)

10. It has been further informed that vide letter dated 11.08.2018, the Divisional Forest Officer, Jamui was requested for providing information regarding National Park, Forest Land and Wild Life Sanctuary, required for grant of the



Environmental Clearance, and in response vide Letter No. 1285 dated 14.08.2018, the Divisional Forest Officer, Jamui, had informed that the district of Sheikhpura had no wild life and the nearest Wild Life Sanctuary is located at Bhim Bandh situated under the jurisdiction of Munger Forest Division, Munger and relevant information may be sought from the Munger Forest Division (Annexure- P6). The Mining Plan was approved in favour of the petitioner vide Letter No. 3695 dated 13.09.2018, by the Department of Mines and Geology, Government of Bihar (Annexure- P3 to the writ petition), after a lapse of 12 months since the date of LOI. The petitioner, vide letter dated 26.12.2019 and 27.12.2019, addressed to Mineral Development Officer, District Mining Officer, Sheikhpura had made a request for grant of Environmental Clearance Certificate viz-a-viz in regard to providing clearance of 500 meters radius and Inspection Certificate from the Circle Officer, Ariari (Annexure- P7 to the writ petition).

11. It has further been informed that the petitioner had submitted an application dated 28.01.2020, for approval of the Terms of Reference (TOR) before the Member Secretary, State Environmental Impact Assessment Authority (SEIAA), Bihar, for the proposed mining block No.27, along with From I,



Principle Feasibility Report (POR), proposed TOR for the Stone Mining under B1 Category and other necessary documents in the prescribed format. The petitioner vide Letter dated 29.01.2020 informed the Mineral Development Officer, District Mining Officer, Sheikhpura about the submission of documents for obtaining environmental clearance to the SEIAA, Bihar. (Annexure – P9) Thereafter, the petitioner once again made request to the Mineral Development Officer, District Mining Officer, Sheikhpura for making available the 500 meters radius letter, vide letter dated 31.01.2020 and in the same letter, the petitioner also acknowledged that Circle Officer (CO) letter vide Patrank- 82 dated 24.01.2020 (Annexure- P10 to the writ petition) was received by him.

12. The petitioner again reminded vide a letter dated 28.02.2020, to the Member Secretary, SEIAA, Bihar for revision of TOR and its rectification in view of the error in the approved mining plan. The petitioner also requested for granting him permission to start Baseline Data Monitoring from March to May 2020(Annexure- P11 to the writ petition). In respect of obtaining the Cluster Certificate (500 Meters radius certificate) from the Mineral Development Officer, District Mining Officer, Sheikhpura, the petitioner had wrote another



letter dated 07.03.2020 (Annexure- P12 to the writ petition).

13. Learned counsel further informed that the petitioner had requested the Member Secretary, Bihar State Pollution Control Board, for convening public hearing and had deposited the requisite amount in the form of demand draft on account of fee for public hearing. The public hearing was scheduled on 24.04.2021, but was deferred to 17.12.2021, due to COVID 19 pandemic. Thereafter, the public hearing was held on 17.12.2021 and several suggestions were given. The petitioner, vide letter dated 30.06.2022 had informed the Mineral Development Officer, District Mining Officer, Sheikhpura about the public hearing and also mentioned therein that District Survey Report (DSR) was required for obtaining environmental clearance and the same had not been issued to him. Learned counsel submitted that instead, a Show Cause was issued by Mineral Development Officer, District Mining Officer, Sheikhpura vide Letter No. 733 dated 06.07.2022, demanding explanation from the petitioner for the delay in obtaining the environmental clearance and warned him of annulment of the LOI and forfeiture of the security deposit as a result of failure to do the needful (Annexure- P17). The reply to this show cause was filed by the petitioner on 01.08.2022



(Annexure - P18). Subsequently, petitioner received another show cause issued by Mineral Development Officer, Sheikhpura bearing Letter No. 954 dated 11.08.2022, directing the petitioner to submit his reply within one week, giving reasons, as to why, the LOI should not be cancelled and the security deposit be forfeited in lieu of failure to submit the environmental clearance installment amount and other amounts as well as documents and Form B (Annexure- P19). The petitioner, in response, had filed his reply to the show cause on 22.08.2022 (Annexure- P20). Thereafter, The District Magistrate vide Letter No. 1068 dated 01.09.2022, again directed the petitioner to submit his explanation, as to why, the "In Principal Approval" granted in favour of the petitioner be cancelled and the earnest money be forfeited for not complying with the directions of the Department as far as submission of the environmental clearance was concerned (Annexure – P21).

14. Learned counsel for the petitioner submitted that the DSR of Sheikhpura Stone Mineral prepared by the Institute of Environment & Eco-Development, Patna which had been submitted to the Under Secretary, Mines & Geology Department, Government of Bihar contains the details of list of LOI Holders in the district along with its validity. The details of



petitioner's LOI has been listed at Sr. No. 17 at internal Page No. 17, but the details about the Location of the Mining Lease (i.e Latitude & Longitude) has not been mentioned and as such the DSR for the petitioner's Stone Block No.17 remained incomplete as would appear from Annexure- P25 to the writ petition being published without providing the geo-coordinates of the proposed mining site. Due to the said discrepancy, the environmental clearance could not be obtained by petitioner from SEIAA within time and as a result, the SEIAA could not issued environmental clearance without specifying the geo-coordinates. Learned counsel emphatically submitted that no reason has been assigned in the impugned order as to why, the respondent has not given any reason why details of geo-coordinates was left blank in the DSR and submitted that on this sole ground the SEIAA has not given the Environmental Clearance to the petitioner.

Respondent's Arguments

15. *Per Contra*, learned counsel for the respondent submitted that as per the Mining Plan issued vide Letter no. 3695 dated 13.09.2018, by the Department, under Clause 04 the petitioner was required to furnish 'Environmental Clearance', as well as, other documents and requisite deposits for execution of



mining lease. Since the petitioner failed to do so even after lapse of about 05 years and 03 months from the date of in principal approval in petitioner's favour, the annulment of 'Principal Approval' and forfeiture of security deposit is therefore justified.

16. He further submitted that the petitioner took more than one year from the date of approval of mining plan, i.e. 13.09.2018, after he had submitted his application before the Mining Development officer, Sheikhpura to get report from the Circle Officer concerned for the mining site for a circular area of 500 meters inspite of the fact that and the Report was made available to the petitioner on 25.01.2019 within 28 days of his submission of application. Petitioner presented his application before the State Environment Impact Assessment Committee (SEIAA) on 28.01.2020 and before the Bihar State Pollution Control Board on 29.01.202, and it shows the deliberate delay and laches on petitioner's part. The explanation provided by the petitioner in reply to the show cause issued by the Collector, Sheikhpura vide Letter No. 1068 dated 01.09.2022, was found to be unsatisfactory. In support, learned counsel submitted that as per the provision of Rule 25(1) of the Bihar Minor Mineral Rules, 1972, the mining lease is required to be executed within



120 days from the date of approval and according to Rule 28 of the Bihar Minor Minerals (Concession, Illegal Mining, and Storage) Rules, 2019 it can be extended for further period of 120 days to 180 days. As per Clause 06 of the tender Documents, the responsibility to obtain environmental clearance lies upon the settlee/auctioneer. Learned counsel, on these grounds, submitted that petitioner has failed to abide by the terms and conditions of LOI and "In Principle Sanction Order". Learned Special P.P. Mines although don't deny that the DSR relating to the Block No. 27 don't contain Geo-Coordinates, which is important for issuance of Environmental Clearance.

ANALYSIS

17. Heard the parties.

18. Nowadays, the ecological imbalances and the consequent environmental damage has become alarming due to reckless mining operations.

19. In **M.C. Mehta Vs. Union of India & Ors., (2006) 11 SCC 582**, the Apex Court directed the Monitoring Committee to inspect the mining activity being carried on in the area in question and report the impact, if any, of continuing mining activity on the environment and the safeguards, if any, adopted to minimize the adverse effects on the environment and



any other suggestions relevant to the issue of impact of mining activity on degradation of the environment.

20. In **T.N. Godavarman Thirumulpad (104) Vs. Union of India & Ors., (2008) 2 SCC 222**, the Apex Court held that adherence to the principle of sustainable development is now a constitutional requirement. The courts are required to balance development needs with the protection of the environment and ecology. It is the duty of the State under the Constitution to devise and implement a coherent and coordinated programme to meet its obligation of sustainable development based on inter-generational equity.

21. In my opinion, imposing reasonable restriction in the interest of general public and reasonable restriction on exercise of rights enshrined under Article 19(1)(g) is unassailable in view of Article 19(6) of the Constitution of India. Any development has to be sustainable. The rights of the petitioner to carry on mining operations are subjected to the directives under Article 48A and fundamental duties enshrined under Article 51A(f) and 51A(g) which are also supreme and cannot be violated under the guise of rights under Article 19(1)(g).

22. It is admitted that the petitioner had



participated in bidding process and he was declared highest bidder on 18.03.2017, and the LOI was issued bearing Letter No. 783 dated 21.09.2017. The Mining Plan was approved vide Letter No.3695 dated 13.09.2018, by the Under Secretary, Department of Mines and Geology, Government of Bihar and as per Clause 04, the petitioner was required to furnish environmental clearance as well as other documents and deposits for execution of mining lease.

23. The petitioner had filed his detailed representation on 09.09.2022 before the District Magistrate, Sheikhpura, who had found the representation to be unsatisfactory and passed order contained in Memo No. 73 dated 23.01.2023 (Annexure-P23 to the writ petition) directing for forfeiture of the security deposit and to take steps for re-auction, and the same was affirmed by the Commissioner of Mines, Bihar vide order dated 14.07.2023 passed in Appeal No. 01/2022, by which earnest money to the tune of Rs.2,90,00,000/- was forfeited annulling the settlement granted in favour of petitioner on ground of delay and laches that even after lapse of 05 years and 03 months, the petitioner failed to produce the Environmental Clearance and the installment amount and other amount, as well as, requisite documents for



execution of Form-B, which is in violation of Rule 28 of the 2019 Rules.

24. There is no discussion in the order about non mentioning of geo-coordinates. The Commissioner of Mines, Bihar in his order dated 14.07.2023, has observed in paragraph no. 11 that in light of the Order passed by the Hon'ble Supreme Court in Civil Appeal No. 3661-3662/2020 dated 10.11.2021, the DSR is to be prepared by the Sub-Divisional Level Committee, which will be reviewed by the State Expert Assessment Committee (SEAC) and post approval action is to be taken by the State Environment Impact Assessment Authority (SEIAA). This procedure would have to followed to re-prepare the DSR as desired by the appellant, which may take about 6 to 12 months and even if the appellant is given more time, he will not be able to complete the actual mining work as he will be able to start only after about a year. In paragraph no. 12, it has been stated that since the time the public auction was conducted i.e on 18.03.2017, six and a half years have lapsed. After such long time there have been changes in the demand and supply of stone minerals and related market parameters. Hence, in such a situation it would not be appropriate from the revenue point of view to give more time to the appellant on the basis of the



highest bidder after delay of six and half years. The Commissioner has dealt with the procedure for preparation of District Survey Report (DSR), but he has not appreciated the fact that it is the Department, which has defaulted in providing details of geo-coordinates in the DSR, which is relevant for issuance of Environmental Clearance. In the counter affidavit, the ground taken for denying the settlement of stone mines is that in accordance with Clause 06 of the tender documents, the responsibility to obtain environmental clearance is of the petitioner.

25. It has not been denied in the counter affidavit that the petitioner had already submitted the requisite documents having been approved by the competent authority in regard to mining plan. The public hearing was also undertaken by the competent authority and the suggestions were accepted and incorporated for the working improvement of the site. It is admitted that the Divisional Forest Officer, Jamui vide Letter No. 1285 dated 14.08.2018 (Annexure P5 to the writ petition), had informed that the district of Sheikhpura had no wild life and the nearest Wild Life Sanctuary is located at Bhim Bandh situated under the jurisdiction of Munger Forest Division, Munger and relevant information was to be given by the



Munger Forest Division (Annexure- P6). The petitioner had made repeated request to Mineral Development Officer, Sheikhpura for grant of Cluster Certificate of 500 meters radius (DMO Letter) and Inspection Certificate from the Circle Officer, Ariari (CO Letter) which is evident from his letters dated 10.08.2018, 22.09.2018, 17.07.2019, 26.12.2019, 27.12.2019, 29.01.2020, 31.01.2020 and 07.03.2020.

26. The main objective of the preparation of DSR is to identify areas of aggradations or deposition where mining can be allowed; and identification of areas of erosion and proximity to infrastructural structures and installations where mining should be prohibited and calculation of annual rate of replenishment and allowing time for replenishment after mining in that area. As per Clause 06 of the Tender Documents, the responsibility to obtain Environmental Clearance lies upon the settlee/auctioneer. The earnest money and security deposit has been deposited by the petitioner. DSR is necessary for issuance of Environmental Clearance. The petitioner has alleged that the DSR of Sheikhpura Stone Mineral prepared by the Institute of Environment & Eco-Development, Patna which had been submitted to the Under Secretary, Mines & Geology Department, Government of Bihar does not contain the details



about the Location of the Mining Lease (i.e. Latitude & Longitude) and as such the DSR for the petitioner's Stone Block No. 27, situated at Mauza Hajratpur, Mandro, Chandi is incomplete (Annexure- P25). The petitioner alleges that due to failure on part of the authorities concerned i.e. Department of Mines, in providing the geo-coordinates of the proposed mining site, the environmental clearance could not be obtained by petitioner from SEIAA in the required time, as SEIAA could not have issued environmental clearance without specifying the geo-coordinates.

**IMPORTANCE OF GEO-CORDINATES IN DSR
FOR ISSUANCE OF ENVIRONMENTAL CLEARANCE.**

27. Geo-coordinates play a crucial role in obtaining environmental clearance for mining projects due to several reasons. Geo-coordinates provide precise location data, aiding in the identification of potential mining sites. This helps in assessing the environmental impact of the proposed mining activity accurately. Geo-coordinates help in conducting comprehensive Environmental Impact Assessments (EIAs) by providing accurate spatial information about the mining area and its surrounding environment. This includes identifying sensitive ecosystems, water bodies, habitats of endangered



species, and other environmental features that could be affected by mining activities. Geo-coordinates help establish baseline data about the environmental conditions of the proposed mining site before any operations begin. This data is essential for monitoring and assessing changes in environmental parameters over time. It also facilitates detailed mapping and planning of mining operations, allowing for the precise delineation of mining boundaries, extraction zones, waste disposal areas, and buffer zones. This aids in minimizing environmental disturbances and optimizing resource utilization. Accurate geo-coordinates demonstrate compliance with regulatory requirements and help authorities monitor and enforce environmental regulations effectively. Geo-coordinates enable stakeholders, including local communities and environmental organizations, to visualize the exact location and extent of proposed mining activities. This promotes transparency and facilitates meaningful public consultation during the environmental clearance process. Geo-coordinates are essential for designing effective mitigation measures and monitoring plans to minimize the environmental impact of mining activities. By precisely identifying sensitive areas and potential environmental risks, proactive measures can be implemented to



mitigate adverse effects on the environment.

28. Overall, geo-coordinates play a vital role in the environmental clearance process for mining projects by providing accurate spatial information that is essential for assessing environmental impacts, planning operations, ensuring regulatory compliance, and promoting sustainable mining practices. In absence of the same, it becomes difficult to determine the suitability of a specific area for the purpose of mining.

29. The Hon'ble Supreme Court in the *State of Bihar Vs. Pawan Kumar & Ors.* (Civil Appeal No. 3661-3662 of 2020) decided on 10th November, 2021 taking note of observation and in the judgment of at paragraph 10 in Special Leave Petition (C) No.19628-19629 of 2009, in the matter of *Deepak Kumar etc. Vs. State of Haryana and Others* reported in (2012) 4 SCC 629 has held that prior to any auction process it is mandatory to have a valid DSR.

30. The observation made by the Hon'ble Supreme Court of India in *State of Bihar and Ors vs. Pawan Kumar and Ors* etc (Civil Appeal No. 3661-3662 of 2020) decided on 10th November, 2021 considered the essentiality and prerequisite of DSR and held as follows:

“8. It cannot be in dispute that though the



developmental activities are not stalled, the environmental issues are also required to be addressed. A balanced approach of sustainable development ensuring environmental safeguards, needs to be resorted to. At the same time, it also cannot be ignored that when legal mining is banned, it gives rise to mushroom growth of illegal mining, resulting into clashes between sand mafias, criminalisation and at times, loss of human lives. It also cannot be disputed that sand is required for construction of public infrastructural projects as well as public and private construction activities. A total ban on legal mining, apart from giving rise to illegal mining, also causes huge loss to the public exchequer.

9. Taking into consideration these aspects of the matter, we propose to issue certain interim directions.

10. The Tribunal, in *Satendra Pandey* [*Satendra Pandey v. Ministry of Environment, Forest & Climate Change*, 2018 SCC OnLine NGT 2388], has found that the Notification dated 15-1-2016, which provided environmental clearance to be given by the District Environment Impact Assessment Authority (hereinafter referred to as “the DEIAA”) was not in consonance with the judgment of this Court in *Deepak Kumar v. State of Haryana* [*Deepak Kumar v. State of Haryana*, (2012) 4 SCC 629]. The Tribunal therefore in *Satendra Pandey* [*Satendra Pandey v. Ministry of Environment, Forest & Climate Change*, 2018 SCC OnLine NGT 2388], had directed Ministry of Environment, Forest and Climate Change (hereinafter referred to as “MoEF and CC”) to take steps to revise the procedure laid down in the Notification dated 15-1-2016. It is to be noted that MoEF and CC, in accordance with the directions of the Tribunal, had issued *Enforcement and Monitoring Guidelines for Sand Mining* (hereinafter referred to as “the 2020 Guidelines”) in the month of January 2020. (Emphasis Supplied)

11. Chapter 4 of the 2020 Guidelines deals with identification of possible sand mining sources and preparation of DSR. It will be relevant to refer to Clauses 4.1.1(a), (o) and (p) of the 2020 Guidelines:

“4.1. Identification of possible sand mining sources and preparation of District Survey Report (DSR)

4.1.1. Preparation of District Survey Report.

(a) District Survey Report for sand mining shall be prepared before the auction/e-auction/grant of the mining lease/Letter of Intent (“LoI”) by Mining Department or department dealing the mining activity in respective states.

(o) Potential site for mining having its impact on the forest, protected area, habitation, bridges, etc. shall be avoided. For this, a Sub-Divisional Committee may be formed which after the site visit shall decide its suitability for mining. The list of mining lease



after the recommendation of the Committee needs to be defined in the following format given in as Annexure II. The Sub-Divisional Committee after the site visit shall make a recommendation on the site for its suitability of mining and also records the reason for selecting the mining lease in the Patta land. The details regarding cluster and contiguous cluster needs to be provided as in Annexure III. The details of the transportation need to be provided as in Annexure IV.

(p) Public consultation—The comments of the various stakeholders may be sought on the list of mining lease to be auctioned. The State Government shall give an advertisement in the local and national newspaper for seeking comments of the general public on the list of mining lease included in the DSR. The DSR should be placed in the public domain for at least one month from the date of publication of the advertisement for obtaining comments of the general public. The comments so received shall be placed before the Sub-Divisional Committee for active consideration. The final list of sand mining areas [leases to be granted on riverbed & patta land/khatedari land, de-siltation location (ponds/lakes/dams), M-Sand Plants (alternate source of sand)] after the public hearing needs to be defined in the final DSR in the format as per Annexure V. The details regarding cluster and contiguous cluster needs to be provided in Annexure VI. The details of the transportation need to be provided in Annexure VII.”

12. It could thus be seen that in accordance with the 2020 Guidelines, the DSR is required to be prepared before the auction/e-auction/grant of mining lease by Mining Department or Department dealing with mining activity in the respective States. It is further provided that the potential site for mining having its impact on the forest, protected area, habitation and bridges should be avoided. For this, a Sub-Divisional Committee is required to be formed which, after the site visit, is required to decide regarding the suitability of the sites for mining. The Sub-Divisional Committee is further required to record its reasons for selecting the mining lease in the patta land. Various details are required to be given in the annexures appended to the said policy.

13. It is further to be noted that Appendix X of the Notification dated 15-1-2016, issued by MoEF and CC also provides for composition of the Sub-Divisional Committee:

“A Sub-Divisional Committee comprising of Sub-Divisional Magistrate, Officers from Irrigation Department, State Pollution Control Board or Committee, Forest Department, Geology or Mining Officer shall visit each site for which environmental clearance has been applied for and make recommendation on suitability of site for mining or



prohibition thereof.”

14. *It is to be noted that with the advent of modern technology, various technological gadgets like drones and satellite imaging, etc. can be used for identification of the potential sites and preparation of the DSR and also to check misuse and unauthorised mining.*

15. *We further find that when the 2020 Guidelines as well as the notification issued by MoEF and CC of 2016 itself provide for constitution of Sub-Divisional Committees comprising of the officers of the State Government from various Departments for identification of the potential sites for mining, there would be no necessity of the DSRs being prepared through private consultants as directed by the Tribunal in the impugned order [Pawan Kumar v. State of Bihar, 2020 SCC OnLine NGT 2848] . The Sub-Divisional Committee consists of various officers from Revenue Department, Irrigation Department, State Pollution Control Board, Forest Department and Geology and Mining Department of the State Government. They are better equipped to visit the sites and prepare the draft DSR for the district concerned. Apart from that, preparation of DSR through private consultants would also unnecessarily burden the public exchequer. We are therefore of the view that the direction in that regard issued by the Tribunal requires to be modified. We are further of the considered view that until the DSRs are finalised and granted approval by SEAC and SEIAA, it is appropriate that certain necessary arrangements are permitted so that the State can continue with legal mining activities. This apart from preventing illegal mining activities, would also ensure that the public exchequer is not deprived of its share in legalised mining.*

16. *We therefore find it appropriate to substitute the directions issued by the Tribunal vide judgment and order dated 14-10-2020 [Pawan Kumar v. State of Bihar, 2020 SCC OnLine NGT 2848] , with the following directions:*

16.1. *The exercise of preparation of DSR for the purpose of mining in the State of Bihar in all the districts shall be undertaken afresh. The draft DSRs shall be prepared by the Sub-Divisional Committees consisting of the Sub-Divisional Magistrate, Officers from Irrigation Department, State Pollution Control Board or Committee, Forest Department, Geological or Mining Officer. The same shall be prepared by undertaking site visits and also by using modern technology. The said draft DSRs shall be prepared within a period of 6 weeks from the date of this order. After the draft DSRs are prepared, the District Magistrate of the district concerned shall forward the same for examination and evaluation by SEAC. The same shall be examined by SEAC within a period of 6 weeks and its report shall be forwarded to SEIAA within the aforesaid*



period of 6 weeks from the receipt of it. SEIAA will thereafter consider the grant of approval to such DSRs within a period of 6 weeks from the receipt thereon.

16.2. Needless to state that while preparing DSRs and the appraisal thereof by SEAC and SEIAA, it should be ensured that a strict adherence to the procedure and parameters laid down in the policy of January 2020 should be followed. (Emphasis Supplied)

16.3. Until further orders, we permit the State Government to carry on mining activities through Bihar State Mining Corporation for which it may employ the services of the contractors. However, while doing so, the State Government shall ensure that all environmental concerns are taken care of and no damage is caused to the environment."

31. In accordance with the guidelines, the DSR is required to be prepared before the auction/e-auction/grant of mining lease by Mining Department or Department dealing with mining activity. It provides the potential site for mining having its impact on the forest, protected area, habitation and bridges should be avoided. For this, a Sub-Divisional Committee is required to be formed which, after the site visit, is required to decide regarding the suitability of the sites for mining. A Sub-Divisional Committee comprising of Sub-Divisional Magistrate, Officers from Irrigation department, State Pollution Control Board or Committee, Forest department, Geology or mining officer shall visit each site for which environmental clearance has to be applied for and make recommendation on suitability of site for mining or prohibition thereof.

32. The petitioner had applied for issuance of



Environmental Clearance Certificate after having submitted required clearances but till date the matter has been kept pending by the department due to want of geo-coordinate details in DSR. The details of Geo-coordinate has been brought on record by way of Annexure-25 to the writ petition.

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16	Stone	Natraj Engineers Pvt. Ltd Block no.- 25	Pro- Sri Amar Kumar Sinha 146- Patliputra Colony, Patna-800013	Li No- 88 Dt-12.02.16	5.06 Ha		Non-Captive	A-25° 5'40.02"N 85°53'4.21"E B-25° 5'37.45"N 85°53'5.33"E C-25° 5'40.41"N 85°53'19.75"E D-25° 5'47.13"N 85°53'17.91"E
17	Stone	M/S Balaji Interprises Block no.- 27	Pro- Sri Jivan kumar, Head office Babu bazar, Aara, Bhojpur	Li No- 783 Dt-21.09.17	5.06 Ha		Non-Captive	160 Liters is allowed
18	Stone	Sri Ravishankar kumar Block no.- 28	S/O- Sri Upendra prasad singh At- Sri Krishnapuri, Dist- Deoghar (Jharkhand)	Li No- 468 Dt-08.06.17	5.06 Ha		Non-Captive	A- 25°3'57.30"N 85°48'9.33"E B- 25°3'52.37"N 85°48'5.30"E C- 25°3'46.09"N 85°48'11.71"E D- 25°3'50.34"N 85°48'16.46"E A- 25°3'57.45"N 85°48'9.63"E B- 25°41.09"N 85°48'15.04"E C- 25°3'55.03"N 85°48'21.30"E D- 25°3'50.70"N 85°48'16.79"E
19	Stone	M/S Raj kumar Singh, Raja Construction Pvt.Ltd Block no.- 29	Pro- Sri Raj kumar singh A/16, Bank of India Colony, Indrapuri, Raja bazar, Patna-800014	Li No- 496 Dt-04.07.17	5.06 Ha		Non-Captive	
20	Stone	D.R.M Purab Madhya Railway	R/O Barishih Mandal Abhiyanta (I) Danapur D.R.M office Purab Madhya Railway, P.O+ P.S- Danapur				Captive	25° 9'3.61"N 85°54'14.47"E

Source: District Mining Office, Sheikhpura (Department of Mines & Geology, Govt. of Bihar)

33. One cannot lose sight of the fact that despite there being delay and latches on part of the petitioner, the respondents too erred in not issuing the geo coordinates of the concerned Stone Block in the DSR, which also added to the duration of delay in obtaining environmental clearance.

34. Now to decide whether order dated 23.01.2023 passed by the District Magistrate, Sheikhpura and



order dated 14.07.2023 passed by the Mines Commissioner, are sustainable. I must reiterate that it is well settled principle of law that earnest money is part of purchase price when the transaction goes forward, it is forfeited when the transaction falls through, *“by reason of all a failure of the vendee”*.

35. The Bihar Minerals (Concession, Prevention of Illegal Mining, Transportation & Storage) Rules, 2019 provides for forfeiture of security deposit in the event of failure on the part of successful bidder. The relevant part of the aforesaid Rule is produced hereinafter:

“22. (c) Amount equivalent to 10[ten percent] of auction amount as security which shall be adjusted with the last installment of auction amount if the mining leaseholder is not otherwise defaulter in payment. In case of unsuccessful bidder the security deposit shall be refunded by the Collector.

(6) Failure on the part of the successful bidder:- In case the successful bidder fails to deposit the required security deposit along with other payable taxes within the prescribed time limit as referred to in the prevailing notification of the State Government in this regard, his security deposit shall be forfeited and a fresh settlement process through public auction shall be initiated.”

36. Rule 28 of the Bihar Mines Minerals (Concession Illegal Mining and Storage) Rules, 2019 provides that lease deed can be executed within 180 days from the date of approval of settlement auction

37. In the present case, whether due to not furnishing of the Environmental Clearance “in principle



sanction order” can be cancelled and Security Deposit can be forfeited, which has already been issued in favour of the petitioner after the petitioner has fulfilled procedure prescribed and has furnished the documents required, whether *judicial review* of the action taken by the respondents is permissible.

38. It is well settled that a writ is not remedy for enforcing contractual obligation. Equally, the existence of alternative remedy does not affect the jurisdiction of Court to issue writ, but ordinarily it would be a good ground for refusing to exercise jurisdiction under Article 226 of the Constitution of India. In the case at hand, the extra-ordinary jurisdiction is being invoked by this Court on the ground that order passed by the Mines Commissioner, Bihar and District magistrate, Sheikhpura are arbitrary as they have not dealt with the issue of non-providence of the geo-coordinates in the DSR, and are silent on the issue of query by the SEIAA, although the same has been referred in the order of the learned Commissioner, which is part of the writ application at Annexure- P24, wherein the Mines Commissioner, Bihar has recorded that SEIAA has raised objections with regard to pre-feasibility report, environmental impact assessment and geo-coordinates.

39. The Apex Court in the case of ***South Eastern***



Coalfields Ltd. v. S. Kumar's Associates AKM (JV), (2021) 9***SCC 166***, has observed as follows:-

“22. We would like to state the issue whether a concluded contract had been arrived at inter se the parties is in turn dependent on the terms and conditions of the NIT, the LoI and the conduct of the parties. The judicial views before us leave little doubt over the proposition that an LoI merely indicates a party's intention to enter into a contract with the other party in future. [Dresser Rand S.A. v. Bindal Agro Chem Ltd., (2006) 1 SCC 751; Rajasthan Coop. Dairy Federation Ltd. v. Maha Laxmi Mingrate Mktg. Service (P) Ltd., (1996) 10 SCC 405] No binding relationship between the parties at this stage emerges and the totality of the circumstances have to be considered in each case. It is no doubt possible to construe a letter of intent as a binding contract if such an intention is evident from its terms. But then the intention to do so must be clear and unambiguous as it takes a deviation from how normally a letter of intent has to be understood. This Court did consider in Dresser Rand S.A. case [Dresser Rand S.A. v. Bindal Agro Chem Ltd., (2006) 1 SCC 751] that there are cases where a detailed contract is drawn up later on account of anxiety to start work on an urgent basis. In that case it was clearly stated that the contract will come into force upon receipt of letter by the supplier, and yet on an holistic analysis—it was held that the LoI could not be interpreted as a work order.

23. Similarly if we construe the documents as discussed in the judgment of this Court in Jawahar Lal Burman case [Jawahar Lal Burman v. Union of India, (1962) 3 SCR 769 : AIR 1962 SC 378] it is unequivocally mentioned that “contract is concluded by this acceptance and formal acceptance of tender will follow immediately on receipt of treasury receipt”. Thus, once again, it has been stipulated as to at what time a contract would stand concluded even though it was later subject to deposit of the security amount. It was in these circumstances that the requirement of security deposit was treated not as a condition precedent but as a condition subsequent. We have to also appreciate the nature of contract which was for immediate requirement of the full quantity of coconut oil to be supplied within 21 days. It was also explicitly mentioned in the LoI itself that any failure to deposit the stipulated amount would be treated as a breach of contract. This is not the case here, where the consequence was simply forfeiture of



the bid security amount, and cancellation of the “award” and not the “contract”.

*24. If we compare the aforesaid scenario in the present case, the period for execution of the contract was one year. The respondent worked at the site for a little over the month, facing certain difficulties—it is immaterial whether the same was of the own making of the respondent or attributable to the appellants. No amount was paid for the work done. The respondent failed to comply with their obligations under the LoI. It is not merely a case of the non-furnishing of performance security deposit but even the integrity pact was never signed, nor work order issued on account of failure to execute the contract. We are, thus, of the view that none of the judgments cited by the learned counsel for the appellants would come to their aid in the contractual situation of the present case. The judgments referred by the learned counsel for the appellants, *Jawahar Lal Burman case [Jawahar Lal Burman v. Union of India, (1962) 3 SCR 769 : AIR 1962 SC 378]* and *Dresser Rand S.A. case [Dresser Rand S.A. v. Bindal Agro Chem Ltd., (2006) 1 SCC 751]*, if one may say so are not directly supporting either of the parties but suffice to say that to determine the issue what has to be seen are the relevant clauses of the NIT and the LoI.*

25. On having discussed the non-compliance by the respondent of the terms of the LoI we turn to the NIT. Clause 29.2 clearly stipulates that the notification of award will constitute the formation of the contract “subject only” to furnishing of the performance security/security deposit. Thus, it was clearly put as a precondition and that too to be done within 28 days following notification of the award. The failure of the successful bidder to comply with the requirement “shall constitute sufficient ground for cancellation of the award work and forfeiture of the bid security” as per Clause 30.2. If we analyse Clause 34 dealing with the integrity pact the failure to submit the same would make the tender bid “as not substantially responsive and may be rejected”.

40. In *Shrijee Sales Corporation v. Union of India* reported in *(1997) 3 SCC 398*, it was observed that once public interest is accepted as the superior equity which can override individual equity the principle would be applicable



even in cases where a period has been indicated for operation of the promise. If there is a supervening public equity, the Government would be allowed to change its stand and has the power to withdraw from representation made by it which induced persons to take certain steps which may have gone adverse to the interest of such persons on account of such withdrawal. Moreover, the Government is competent to rescind from the promise even if there is no manifest public interest involved, provided no one is put in any adverse situation which cannot be rectified. Similar view was expressed in ***Pawan Alloys and Casting (P) Ltd. v. U.P.SEB [(1997) 7 SCC 251]*** and in ***STO v. Shree Durga Oil Mills [(1998) 1 SCC 572]*** and it was further held that the Government could change its industrial policy if the situation so warranted and merely because the resolution was announced for a particular period, it did not mean that the Government could not amend and change the policy under any circumstances. If the party claiming application of the doctrine acted on the basis of a notification it should have known that such notification was liable to be amended or rescinded at any point of time, if the Government felt that it was necessary to do so in public interest.

41. It is now well settled that a letter of intent



merely indicates a party's intention to enter into a contract with the other party in future. A letter of intent is not intended to bind either party ultimately to enter into any contract. The Apex Court, while considering the nature of a letter of intent, observed thus in ***Rajasthan Co-operative Dairy Federation Ltd. v. Maha Laxmi Mingrate Marketing Service (P) Ltd : [(1996) 10 SCC 405]***:

" The letter of intent merely expressed an intention to enter into a contract. There is no binding legal relationship between the appellant and respondent 1 at this stage and the appellant was entitled to look at the totality of circumstances in deciding whether to enter into a binding contract with Respondent 1 or not".

42. Lease is a contract. But in a lease, a lessor, allows the other party, the lessee, use of the property for a period of time in exchange for consideration usually a monthly sum of money, and the original owner ultimately retains title to the property.

43. In above view, it has to be also considered, as to whether, the petitioner can duly be held responsible for any delay in obtaining the Environmental Clearance and has violated the terms of the LOI.

44. The legal right that can be enforced must ordinarily be the right, who complains of infraction of such right



and approaches the Court for relief as regards the same. A "legal right", means an entitlement arising out of legal rules. Thus, it may be defined as an advantage, or a benefit conferred upon a person by the rule of law. The expression, "person aggrieved" does not include a person who suffers from a psychological or an imaginary injury; a person aggrieved must therefore, necessarily be one, whose right or interest has been adversely affected or jeopardized. In ***Laxminarayan R. Bhattad v. State of Maharashtra, (2003) 5 SCC 413*** the Apex Court held that "the manner in which a statutory authority had understood the application of a statute would not confer any legal right upon a party unless the same finds favour with the Court of law dealing with the matter."

45. It is also well settled principle of law that apart from the statutory duty it is incumbent upon every authority to give reasonable opportunity of hearing to affected parties before passing any order having civil consequences. The Apex Court in the case of ***Chairman State Bank of India and Anr. v. M.J. James*** reported in ***(2022) 2 SCC 201*** in paragraph nos. 28 and 29 has held as under :-

"28. Traditional English law recognised and valued the rule against bias that no man shall be a judge in his own cause i.e. nemo debet esse judex in propria causa; and the obligation to hear the other or both sides as no person should be condemned unheard i.e. audi alteram



partem. To these, new facets sometimes described as subsidiary rules have developed, including a duty to give reasons in support of the decision. Nevertheless, time and again the courts have emphasised that the rules of natural justice are flexible and their application depends on facts of each case as well as the statutory provision, if applicable, nature of right affected and the consequences. In A.K. Kraipak v. Union of India [A.K. Kraipak v. Union of India, (1969) 2 SCC 262] the Constitution Bench, dwelling on the role of the principles of natural justice under our Constitution, observed that as every organ of the State is controlled and regulated by the rule of law, there is a requirement to act justly and fairly and not arbitrarily or capriciously. The procedures which are considered inherent in the exercise of a quasi-judicial or administrative power are those which facilitate if not ensure a just and fair decision. What particular rule of natural justice should apply to a given case must depend to a great extent on the facts and circumstances of that case, the framework of law under which the enquiry is held and the constitution of the body of persons or tribunal appointed for that purpose. When a complaint is made that a principle of natural justice has been contravened, the court must decide whether the observance of that rule was necessary for a just decision in the facts of the case.”

29. Legal position on the importance to show prejudice to get relief is also required to be stated. In *State Bank of Patiala v. S.K. Sharma* [State Bank of Patiala v. S.K. Sharma, (1996) 3 SCC 364] a Division Bench of this Court distinguished between “adequate opportunity” and “no opportunity at all” and held that the prejudice exception operates more specifically in the latter case. This judgment also speaks of procedural and substantive provisions of law embodying the principles of natural justice which, when infringed, must lead to prejudice being caused to the litigant in order to afford him relief. The principle was expressed in the following words : (SCC p. 389, para 32)

“32. Now, coming back to the illustration given by us in the preceding paragraph, would setting aside the punishment and the entire enquiry on the ground of aforesaid violation of sub-clause (iii) be in the interests of justice or would it be its negation? In our respectful opinion, it would be the latter. Justice means justice between both the parties. The interests of justice equally demand that the guilty should be punished and that technicalities and irregularities which do not occasion failure of justice are not allowed to defeat the ends of justice. Principles of natural justice are but the means to achieve the ends of justice. They cannot be perverted to achieve the very opposite end. That would be a counterproductive exercise.



46. In the above background, the question arises, as to whether, the amount of security deposited could have been forfeited when agreement was not entered and the subsequently also the contract was not executed. As the security deposit is made for ensuring satisfactory completion of contract and default in that process shall entail forfeiture thereof, in other words performance guarantee. Before addressing upon the aforesaid question, it is considered apposite to refer to the judgment of Hon. Supreme Court in the matter of ***Saurabh Prakash Vs. DLF Universal Ltd. (2007) 1 SCC 228***; wherein, distinction has been drawn and explained between words earnest money and security deposit in the context of contractual matter and consequence flows therefrom. For ready reference para 42 & 43 of the aforesaid judgment is quoted hereinbelow:-

"42. The distinction between a security and an earnest money has also been pointed out by this Court in Maula Bux v. Union of India [(1969) 2 SCC 554] in the following terms:

"4. Under the terms of the agreements the amounts deposited by the plaintiff as security for due performance of the contracts were to stand forfeited in case the plaintiff neglected to perform his part of the contract. The High Court observed that the deposits so made may be regarded as earnest money. But that view cannot be accepted. According to Earl Jowitt in Dictionary of English Law at p. 689; "Giving an earnest or earnest-money is a mode of signifying assent to a contract of sale or the like, by giving to the vendor a nominal sum (e.g. a shilling) as a token that the parties are in earnest or have made up their minds". As observed by the Judicial Committee in Kunwar Chiranjit Singh v. Har Swarup, AIR 1926 PC 1,:

"Earnest money is part of the purchase price when the



transaction goes forward; it is forfeited when the transaction falls through, by reason of the fault or failure of the vendee."

In the present case the deposit was made not of a sum of money by the purchaser to be applied towards part payment of the price when the contract was completed and till then as evidencing an intention on the part of the purchaser to buy property or goods. Here the plaintiff had deposited the amounts claimed as security for guaranteeing due performance of the contracts. Such deposits cannot be regarded as earnest money."

43. Referring to [Section 74](#) of the Indian Contract Act, it was observed:

"There is authority, no doubt coloured by the view which was taken in English cases, that [Section 74](#) of the Contract Act has no application to cases of deposit for due performance of a contract which is stipulated to be forfeited for breach, Natesa Aiyar v. Appayu Padayachi; Singer Manufacturing Company v. Raja Prosad; Manian Pattar v. Madras Railway Company. But this view is no longer good law in view of the judgment of this Court in Fateh Chand case. This Court observed at p. 526: "[Section 74](#) of the Indian Contract Act deals with the measure of damages in two classes of cases: (i) where the contract names a sum to be paid in case of breach, and (ii) where the contract contains any other stipulation by way of penalty,' 'The measure of damages in the case of breach of a stipulation by way of penalty is by [Section 74](#), reasonable compensation not exceeding the penalty stipulated for.' "

The Court also observed:

"It was urged that the section deals in terms with the right to receive from the party who has broken the contract reasonable compensation and not the right to forfeit what has already been received by the party aggrieved. There is however no warrant for the assumption made by some of the High Courts in India, that [Section 74](#), applies only to cases where the aggrieved party is seeking to receive some amount on breach of contract and not to cases whereupon breach of contract an amount received under the contract is sought to be forfeited. In our judgment the expression "the contract contains any other stipulation by way of penalty"

comprehensively applies to every covenant involving a penalty whether it is for payment on breach of contract of money or delivery of property in future, or for forfeiture of right to money or other property already delivered. Duty not to enforce the penalty clause but only to award reasonable compensation is statutorily imposed upon courts by [Section 74](#). In all cases, therefore, where there is a stipulation in the nature of penalty for forfeiture of an amount deposited pursuant to the terms of contract which



expressly provides for forfeiture, the court has jurisdiction to award such sum only as it considers reasonable, but not exceeding the amount specified in the contract as liable to forfeiture, and that, "There is no ground for holding that the expression 'contract contains any other stipulation by way of penalty' is limited to cases of stipulation in the nature of an agreement to pay money or deliver property on breach and does not comprehend covenants under which amounts paid or property delivered under the contract, which by the terms of the contract expressly or by clear implication are liable to be forfeited."

47. In the present case, the contract for mining lease did not come into existence. The earnest money was deposited and the security amount was also deposited for guaranteeing due performance of contract. Section 74 of the Indian Contract Act deals with the measure of damages in two classes of cases:

(i) where the contract names a sum to be paid in case of breach, and (ii) where the contract contains any other stipulation by way of penalty than reasonable compensation not exceeding the penalty stipulated for is statutorily imposed.

48. Firstly, considering the fact that the petitioner having furnished all the documents merely on the ground of delay caused, which cannot be said to have happened solely on the part of the petitioner in obtaining certificates from different departments and Ministry, interference is called considering the fact that mining lease did not come into existence due to non submission of Environmental Clearance in absence of DSR giving details of Geo-coordinate in respect of



the Block No. 27 allocated in favour of the petitioner albeit with much delay.

49. So far as, the delay in execution of lease deed is concerned, the same could not be executed due to non furnishing of Environmental Clearance, which admittedly could not be issued because the DSR of year 2016 did not contain the details of Geo-Coordinates in respect of the mining Block No. 27 and it can not be considered to be fault of the petitioner alone. Admission in this regard by the Special P.P. Mines also support the reason of delay due to defective DSR in respect of the petitioner wanting details of Longitude and Latitude. I am of the considered opinion that the lease deed could not be executed due to the lapses on the part of the both the parties. I find that the order dated 23.01.2023 passed by the District Magistrate and the order dated 14.07.2023 passed by the Mines Commissioner are required to be interfered by this Court.

50. Secondly, it is known that the entire globe faced COVID-19 pandemic because of *Force Majeure* from 2020 till the date the Standard Operation Procedure (SOP) being relaxed in view of the judgment dated 10.11.2021 passed by the Apex Court.

51. In above view of the facts and



circumstances, settled principle of law and discussions made hereinabove, I am of the opinion that the contract for mining lease did not come into existence and the security deposit in the tune of Rs. 2,90,00,000/- could not be forfeited when the transaction fell through for no fault on part of the petitioner, as such, the order dated 23.01.2023, passed by the District Magistrate, Sheikhpura as contained in Memo No. 73 and order dated 14.07.2023 and consequential order of the Mines Commissioner, Department of Mines & Geology, Government of Bihar, Patna, upholding the order of District Magistrate, Sheikhpura dated 23.01.2023, whereby In Principal approval/settlement has been annulled and security deposit of Rs.2,90,00,000/- has been forfeited, cannot be sustained *are hereby set aside and quashed.*

52. I direct the competent authority-cum-District Magistrate to finalize the DSR and, thereafter, extend the time and issue work order followed by final settlement of the contract of lease within a period of six weeks from the date of passing of this order.

53. It must be taken note of the fact that already more than six years have lapsed and no third party right has been created, therefore, the Competent Authority-cum-the



District Magistrate and the Additional Chief Secretary, considering that proposal has been submitted by the Proponent of Project (PP) before the SEIAA and considering the said proposal in detail as would appear from Letter dated 9th July, 2020 for considering of 'Term of Reference' (TOR), hereinabove petitioner having satisfied, the Competent Authority is required to take decision for issuing modified D.S.R. giving the Geo-coordinate expeditiously without further delay. The authorities concern must abide by the direction contained in paragraphs no. 16, 16.1, 16.2 and 16.3 in *Pawan Kumar (Supra)* to submit the modified DSR Report expeditiously to the SEIAA, for taking appropriate action as required, so that Environmental Clearance Certificate can be issued for starting the mining activity after having complied with all the requisite formalities within a period of six weeks.

54. The SEIAA too should not delay in taking decision to issue Environmental Clearance Certificate forthwith.

55. In any case, the above exercise is required to be carried out by the petitioner and respective respondents well within a period of eight weeks from the date of communication of this order.

56. Accordingly, the present writ petition is



disposed of.

57. There shall be no order as to costs.

(Purnendu Singh, J)

Niraj/-

AFR/NAFR	A.F.R.
CAV DATE	20.03.2024
Uploading Date	02/05/2024
Transmission Date	N/A

