IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.2787 of 2020

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Amarnath Singh @ Amar Nath Singh Son of Late Parshuram Singh, Resident of Subhago Parshuram Kothi, Chuna Bhatta, Near Railway Station, Karma, P.S. Dehri on Sone, District- Rohtas (Sasaram)

... ... Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary, Mines and Geology Department, Government of Bihar, Vikas Bhawan, Bailey Road, Patna.
2. The Principal Secretary cum Mines Commissioner, Mines and Geology Department, Government of Bihar, Vikas Bhawan, Bailey Road, Patna.
3. The Special Secretary cum Director, Mines and Geology Department, Government of Bihar, Vikas Bhawan, Bailey Road, Patna.
4. The Additional Secretary cum Director, Mines and Geology Department, Government of Bihar, Vikas Bhawan, Bailey Road, Patna.
5. The District Magistrate, Aurangabad.
6. The District Mining Officer, Aurangabad.
7. The State Level Environment Impact Assessment Authority, through its Chairman, 2nd floor, Beltron, Baldev Bhawan Rd, Shastri Nagar, Patna, Bihar 800023.
8. Aditya Multicom Private Limited, 12 Waterloo Street, Kolkata, West Bengal 700069.

... ... Respondent/s

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Appearance:-

For the Petitioner	:-	Mr. Ajit Kumar, Sr. Advocate
		Mr. Rajeev Kumar Singh, Adv.
For the Mines Department	:-	Mr. Naresh Dixit, Special P.P.
For the State	:-	Mr. Gyan Praksh Ojha, GA-7
		Mr. Uday Shankar Pandey, Advocate
For the S.L.E.I.A.A.	:-	Mr. Kumar Ravish, Advocate
For Respondent No. 8	:-	Mr. Suraj Samrdarshi, Advocate

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CORAM: HONOURABLE MR. JUSTICE MOHIT KUMAR SHAH
CAV JUDGMENT
Date : 16-12-2021

The present writ petition was initially filed for quashing the letter dated 27.12.2019 issued by the respondent

Special Secretary-cum-Director, Mines & Geology Department, in exercise of Rule 77(2) of the Bihar Minerals (Concession, Prevention of Illegal Mining, Transportation & Storage) Rules, 2019 (hereinafter referred to as 'the Rules, 2019') whereby the settlement period of settlees of sand ghat in the State of Bihar, which was ending on 31.12.2019, had been extended till 31.10.2020, as also to direct the respondents to allow the petitioner to conduct the mining activity at the Aurangabad Sone sand ghat bearing no. 32. The petitioner had also prayed to hold that the settlement term of the respondent no. 8 cannot be extended and no other person can be allowed to conduct mining of sand in the District of Aurangabad without having obtained an environmental clearance from the competent authority. Subsequently the petitioner had also prayed for quashing the decision of the Government of Bihar dated 29.12.2020 whereby the settlement period of the existing settlees of sand ghat in the State of Bihar has been extended till 30.03.2021. However, with the efflux of time, the petitioner has now confined his relief and only seeks a direction upon the respondent authorities to refund the earnest money, security money and other amounts deposited by the petitioner for the settlement of sand ghat no. 32 in the Aurangabad district pursuant to the auction held in the year

2019, inasmuch as despite repeated request made by the petitioner, the respondent authorities have failed to issue work order in favour of the petitioner. In such view of the matter, the writ petition has accordingly stood amended by an order dated 22.06.2021 passed by this Court in the present case.

2. The brief facts of the case according to the petitioner are that in light of the new sand policy, 2013 the respondent Department of Mines and Geology, Government of Bihar (herein after referred to as the "respondent Mines Department") had issued a notification dated 22.07.2014 by which criteria and procedure for settlement of sand mines for the period 01.01.2015 to 31.12.2019 was published in the official gazette. The State Government had then, in exercise of its power conferred by section 15 of the Mines & Minerals (Development & Regulation) Act, 1957, had amended the Bihar Minor & Minerals Concession Rules, 1972 to bring it in consonance with the new sand policy, 2013 and the amendment had come into effect from 11.08.2014. In view of the fact that the settlement of the earlier successful bidders was in light of the aforesaid policy of the State Government, an advertisement was published on behalf of the Mines & Geology Department for settlement of sand ghats by auction for a period of five years

i.e. from 01.02.2015 to 31.12.2019. The settlement of the successful bidders ended on 31.12.2019 and for the period 2013-19, private respondent no. 8 was the settlee for the district of Aurangabad. In the meantime, the State Government formulated the Bihar Sand Mining Policy, 2019 which was notified on 14.08.2019 and was made applicable with immediate effect. The respondents then came out with the *Bihar Minerals (Concession, Prevention of Illegal Mining, Transportation & Storage) Rules, 2019* which was published in the gazette on 17.09.2019. The respondents had then published a notice inviting e-auction for settlement of 40 sand ghats in the district of Aurangabad. The e-auction was held on 26.12.2019 and the auction of 16 sand ghats was finalized. The petitioner had also participated in the auction process and was declared highest bidders “for Aurangabad Sone sand ghat No. 32”. The Mineral Development Officer, Aurangabad had then issued letter dated 30.12.2019, directing the petitioner to deposit a sum of Rs. 3,20,50,000/- being the auction amount, qua the settlement of the sand ghat in question. Nonetheless, the Special Secretary-cum-Director, Mines & Geology Department, by his letter dated 27.12.2019 had extended the settlement period of the existing settlees of the sand ghats in Bihar, which was ending on

31.12.2019 till 31.10.2020 or till the new settles obtain environmental clearance or whichever is earlier. It is also the case of the petitioner that the mining plan and environmental clearance granted to the respondent no. 8 for the sand ghats of Aurangabad was valid only till 31.12.2019 and the same has stood lapsed, hence no mining activity can be undertaken as per Rule 17 & 18 of the Rules, 2019. It has also been pointed out that during the pendency of the present writ petition, the State Government, by press notice dated 29.12.2020 has extended the settlement period till 30.03.2021. It is also pointed out that vide notification dated 31.03.2021, the respondent Government of Bihar has further extended the settlement of existing settlees till 31.09.2021, thus rendering the settlement made to the petitioner and other similarly situated settlees nugatory without any lapse on their part and only on account of the arbitrary and illegal action of the respondent authorities.

3. The learned senior counsel for the petitioner Shri. Ajit Kumar has referred to clause 17 & 23 of the notification dated 14.08.2019 issued by the Government of Bihar, Department of Mines & Geology with regard to the Bihar Sand Mining Policy, 2019, to show that the State Mining Department is required to obtain the environmental and other clearances in a

time bound manner for the various sand ghats and for the purposes of obtaining statutory environmental and other clearances, the District Mining Officer and Director, Mines has to take necessary action. The learned senior counsel for the petitioner has next referred to the Rules, 2019, the relevant rules whereof are quoted herein below:-

> *“Rule 2(vi) "Department" means the Department of Mines and Geology, Government of Bihar;*
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> *Rule 17(4) (4) Approval and submission of Mining Plan.—All Mineral Concession Holders or the Government/Corporation as the case may be shall submit a mining plan duly prepared by an RQP and approved by the Director or any officer / person/academic institution/Govt. agency authorized by the Department in this regard within a period of three months from the date on which communication regarding grant of mineral concession is received or such other period as may be decided/ allowed by the department for the submission of the approved mining plan. Provided that in case mine plan is prepared by the*

department through agencies, the cost shall be realized from the concerned Mineral Concession holder/ settlee.

Rule 18(2) Environmental Clearance- All Mineral Concession Holders or the Government/ Corporation as the case may be shall obtain prior environmental clearance as per the prevailing Environmental Impact Assessment notification and latest instructions issued by the Competent Authority of the Ministry of Environment and Forest, Government of India in this regard and as per the provisions of the Environment Protection Act. Provided further that the Mineral Concession Holder shall obey and comply with such other instructions, regarding environmental protection and Environmental Clearance issued from time to time by the Government of India, State Government, Central Pollution Control Board, State Pollution Control Board and the Collector of the District.

Rule 29 (A) (1) Mode of Settlement.— The settlement of sand as minor mineral shall be done by public

auction-cum-tender through e-bidding mode in favour of the highest bidder by the Collector/any officer so authorised by the State Government

(e) The successful bidder or the Government/ Corporation as the case may be shall obtain environmental clearance from the competent authority as per the prevailing Environmental Impact Assessment notification of the Ministry of Environment, Forest & Climate Change, Government of India and as per the provisions of the Environment Protection Act."

4. The learned senior counsel for the petitioner has further referred to the tender document pertaining to the settlement of the sand ghats for a period of five years with effect from 01.01.2020 containing the terms and conditions for settlement of the sand ghats which can be found at page no. 122 of the writ petition. The learned senior counsel for the petitioner has referred to clause-9 thereof to show that the settlement of the sand ghats would be valid for a period of five years starting from 01.01.2020. Clause 10 thereof has also been referred to, which prescribes the formalities to be carried out after selection

and clause- (ii) thereof pertains to mining plan and it clearly states that the mining plan shall be prepared and endorsed by the department as per the prevailing rules by means of an agency and the expenditure meted out shall be realized from the concerned settlees. The learned senior counsel for the petitioner has next submitted that the existence of a valid District Survey Report (DSR) is a *sine qua non* for making settlement of the ghats and the said DSR is required to be prepared in terms of the Sustained Mining Management Guidelines, 2016 and the Enforcement and Monitoring Guidelines for Sand Mining, 2020 read with the notification dated 15.01.2016 issued by the Ministry of Environment and Forest and Climate Change. The learned senior counsel for the petitioner has referred to a Judgment dated 14.10.2020, passed by the National Green Tribunal, Principal Bench, New Delhi, in the case of ***Pawan Kumar vs. The State of Bihar & Ors***. (O.A. No. 40/2020/EZ), relevant paragraphs whereof, i.e paragraphs nos. 55 to 66, 68 to 70, 79, 81, 84 and 101 to 103 are reproduced herein below:-

> *"55. According to the State, the action taken in preparing DSR 2019 was a studied scientific approach and, therefore, legal and valid.*
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> *56. This submission, in our considered*

opinion, clearly appears to be a fallacious and a bald assertion. As would be apparent from the process for preparation of a DSR, there are multiple factors that require to be gone into with an approach attended by scientific temper. The exercise is aimed not only at exploitation of mineral solely with the economic objective but also to ensure sustainable mining so that natural resources can be utilized in an environment friendly manner in a scientific and systematic way for protection of the environment and ecology by following the principle of Sustainable Development. In the present case, we find that exercise undertaken by the DLC was only to access the quantum of the fresh sand deposits accumulated during the monsoons. Related to this, is the claim of the State that the report of the DLC is the 2019 DSR. We find it difficult to accept this for the following reasons:

a) According to the State, the DSR published on 10.12.2018 is not an Interim DSR as claimed by the Applicants but a final

one. This was expanded by inclusion of 14 Sand Ghats based on the report dated 19.09.2019 submitted by the DLC. We have closely examined the report of the DLC dated 19.09.2019 in hindi filed as Annexure A-1 by the State in its Counter Affidavit in O.A. No. 40/2020/EZ and find that far from being a DSR, it has been prepared only "for assessment of plot and security deposits for settlement of Sand Blocks of rivers situated in Banka district w.e.f. F.Y. 2020 to F.Y. 2024 and to complete other procedures". For convenience we may reproduce the translated version of the DLC report below:

"Report of committee constituted by the Collector under the chairmanship of Additional Collector, Banka for assessment of plot and security deposit for settlement of Sand Blocks of rivers situated in district–Bank w.e.f. next

financial year 2020 to financial year 2024 and to complete other procedures. In the light of Sand Mining Policy, 2019 promulgated vide Notification no. 02/M.M. (Ba)-227/18-2650/M, Patna dated 14.08.2019 of the Mines & geology Department, Bihar , Patna, today on 19.09.19, the meeting of committee constituted vide Memo No. 1132/Go., Banka dated 08.09.19 of Collector, Banka for assessment of security deposit after earmarking the plots for settlement of Sand Ghats situated in District – Banka for the period of five years w.e.f. next financial year 2020, was called, wherein, all the members of committee viz. Additional Collector (Chairman), Sub-Divisional Officer, Banka (Member), Land Reforms Deputy Collector, Banka (Member), Executive Engineer, Rural Works Department, Works Division, Banka-1 (Member) and Mineral

Development Officer-cum-Incharge, mining Director, Banka (Convener) were present. In the light of aforesaid notification and departmental letters, the discussion for earmarking the Sand Blocks in the sand deposit rivers situated in District – Banka and for assessment of security deposit rivers situated in District – Banka and for assessment of security deposit for settlement of sand ghats for a period of 05 years w.e.f. next financial year 2020, took place amongst all the members of committee. During the discussion, this fact came into the light that:

(01) The Consolidated settlement amount of Sand Ghat of District-Banka for the current financial year 2019, is Rs. 45,49,06,368/- (Rupees Forty Five Crores, Forty Nine Lakhs Six Thousand Three Hundred & Sixty Eight Only).

(02) In the light of Departmental Letter no,

2681/M, Patna, dated 16.08.19 the assessment of security deposit for the settlement of sand Ghats of District-Banka for the year 2020 to 2024, has to be done by increasing 20% settlement amount of Rs. 45,49,06,368/- (Rupees Forty Five Crores, Forty Nine Lakhs Six Thousand Three Hundred & Sixty Eight Only) of current financial year 2019. Meaning thereby is that, the minimum consolidation security deposit of Rs. 54,58,87,642.00 (Rupees Fifty Four Crores Fifty Eighty Seven Thousand Six Hundred & Forty Two Only) has to be assessed for all the proposed blocks of Banka District for the settlement of the financial year 2020 to 2024.

(03) During the Settlement of Sand Ghats for the year 2015 to 2019, the sand area of Chanan River from Ghogha Bear (Sub-Division Amarpur) upto the limits of Bhagalpur in downstream, was restricted for

settlement due to irrigation problems of farmers, due to which, it's settlement was not done. Similarly, the settlement of sand areas of Gerual River was also not done by treating the same as restricted area. By maintaining the status quo of both these sand areas, and by dividing, the sand areas of Chanan River in the light of para 5(i) and (iii) of Departmental Letter No. 2681/M, dated 16.8.19 and Departmental notification no. 02/M.MM.(Ba.)-227/18-2650/M, Patna dated 14.8.19, the consideration was made by the committee on making Sand Blocks. In this continuation, it was discussed to keep Block-1 along with Block1, and Block-5 along with Block-4, but, on doing so, according to para-6 of the Departmental Notification i.e. procedure of settlement of sand ghats – "(a) Any person/ registered copy/ Partnership Society government agency shall be entitled for

auction of maximum two Sand Blocks or 200 hect. Area, whichever is lesser", according to which, the consolidated Rakba of Block-1 and Block-2 of Chandan/ Chanan River becomes 252 hect., and similarly consolidated Rakba of Block-4 and Block-5 becomes 275.8 hectares, which goes contrary to the condition mentioned in the aforesaid paragraph. In this situation, in view of the departmental letter no. 3161/M, Patna dated 16.9.19, it was unanimously decided by the committee to make 7 Sand Blocks of sand areas of Chanan River.

(04) Similarly, it was also unanimously decided by the committee to make Sand Blocks by dividing Badula river in two blocks, i.e. one-one blocks in Up Stream and Down Stream for the Dam, due to having Hanuman Dam and Reservoir in Badua River, and to make Sand Blocks by treating the

other sand deposit rivers of district as single stretch. In this manner, it was decided by the committee to make total 14 Sand Blocks in district – banka, whose' details are as under:-

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It was unanimously decided by the Committee to send proposal to the Collector, Banka for making of Sand Blocks River Units and according to assess the proposed security deposit." [Underlining supplied]

57. Therefore, the manner of identifying the Sand Ghats/ Blocks cannot be accepted as being environmentally sound which is the object of the SSMMG-2016 being the only guideline applicable at that time. This position is further strengthened when, even according to the State, the entire exercise for identifying the Sand Ghats was undertaken in terms of the Bihar Sand Mining Policy, 2019 which primarily deals with the procedures for identification of Sand

Ghats after its physical identification under sub-clauses (i) and (ii) of Clause 5 of the said Policy and also matters relating to its bidding. The exercise also violates the very object of preparing a DSR as decided by the Hon'ble Supreme Court in the case of Deepak Kumar (supra). In that case, the Hon'ble Supreme Court was dealing with auction notices in respect of auction proposed by the Government of Haryana in respect of the extraction of minor minerals, boulders, gravel and sand quarries for an area not exceeding 4.5 ha in each case in the districts of Panchkula, Ambala and Yamuna Nagar and quarrying of minor minerals above 5 ha in Bhiwani district and stone and sand mines in the district of Mohindergarh, etc., by circumventing the EIA Notification 14.09.2006 in breaking the homogeneous area into pieces of less than 5 ha against which no EIA was required to be undertaken. The Hon'ble Supreme Court noted that there was no material to conclude that such mining would not cause environmental degradation or threat

to the biodiversity or destroy riverine sites of the river. It was further noted as under:

> *"..... 9. Extraction of alluvial material from within or near a streambed has a direct impact on the stream's physical habitat characteristics. These characteristics include bed elevation, substrate composition and stability, in-stream roughness elements, depth, velocity, turbidity, sediment transport, stream discharge and temperature. Altering these habitat characteristics can have deleterious impacts on both in-stream biota and the associated riparian habitat. The demand for sand continues to increase day by day as building and construction of new infrastructures and expansion of existing ones is continuous thereby placing immense pressure on the supply of the sand resource and hence mining activities are going on legally*

and illegally without any restrictions. Lack of proper planning and sand management cause disturbance of marine ecosystem and also upset the ability of natural marine processes to replenish the sand.

..... 26. We find that it is without conducting any study on the possible environmental impact on/in the river beds and elsewhere the auction notices have been issued. We are of the considered view that when we are faced with a situation where extraction of alluvial material within or near a river bed has an impact on the rivers physical habitat characteristics, like river stability, flood risk, environmental degradation, loss of habitat, decline in biodiversity, it is not an answer to say that the extraction is in blocks of less than 5 hectares, separated by 1 kilometre, because their collective impact may be significant, hence the necessity of a proper

environmental assessment plan."

[Underlining supplied]

58. A Core Group was constituted by the MoEF & CC to look into the environmental aspects associated with the minor minerals vide its order dated 24.03.2009. In its report, the Core Group indicated unambiguously that operation of mines of minor minerals needs to be subjected to strict regulatory parameters as that of mines of major minerals and ought to be permitted only under an approved framework of mining plan, which should provide for reclamation and rehabilitation of mined out areas. Taking into consideration location of any eco-fragile zone(s) within the impact zone of the proposed mining area, the related rules/notifications governing such zones as well as judicial pronouncements, if any. The Hon'ble Supreme Court further observed as follows:

"25. Quarrying of river sand, it is true, is an important economic activity in the country with river sand forming a

crucial raw material for the infrastructural development and for the construction industry but excessive in-stream sand and gravel mining causes the degradation of rivers. In-stream mining lowers the stream bottom of rivers which may lead to bank erosion. Depletion of sand in the streambed and along coastal areas causes the deepening of rivers which may result in destruction of aquatic and riparian habitats as well. Extraction of alluvial material as already mentioned from within or near a streambed has a direct impact on the stream's physical habitat characteristics.

26. We are of the considered view that it is highly necessary to have an effective framework of mining plan which will take care of all environmental issues and also evolve a long term rational and sustainable use of natural resource base and also the bio-assessment protocol. Sand mining, it may be noted,

may have an adverse effect on bio-diversity as loss of habitat caused by sand mining will effect various species, flora and fauna and it may also destabilize the soil structure of river banks and often leaves isolated islands. We find that, taking note of those technical, scientific and environmental matters, MoEF, Government of India, issued various recommendations in March 2010 followed by the Model Rules, 2010 framed by the Ministry of Mines which have to be given effect to, inculcating the spirit of Article 48A, Article 51A(g) read with Article 21 of the Constitution."

[Underlining supplied]

59. It is significant to note that SSMMG-2016 was framed pursuant to the decision in Deepak Kumar (supra), in addition to MoEF & CC Notification dated 15.01.2016 prescribing the procedure for Environment Impact Studies in respect

of areas less than 5 ha by constitution of DEIAA in the States.

60. While the SSMMG-2016 is relevant for the purpose of DSR and issues cognate thereto, MoEF & CC Notification dated 15.01.2016 deals with EIA process in respect of various categories of mines by amending the schedule thereto. Appendix X of the said Notification prescribes that the DEIAA is also the authority for preparing the DSR. On a conjoint reading of the decision in the case of Deepak Kumar (supra) and the SSMMG-2016, it will be apparent that the exercise undertaken by the DLC as reflected in its report dated 19.09.2019 to prepare the DSR 2019, as claimed by the State, cannot be considered as a valid exercise for preparation of DSR since the requisite studies have obviously not been carried out. The exercise is lacking in the process prescribed in the SSMMG-2016 (supra) and the structure of the DSR set out therein. Merely quantifying mineable minerals cannot be considered as complete studies for preparation of DSR as there are other

critical and crucial environmental factors which require to be gone into as would appear from the process prescribed under SSMMG-2016 reproduced earlier11 and the decision of the Hon'ble Supreme Court in Deepak Kumar (supra).

61. We find resonance of this even in the EMGSM-2020 referred to by the MoEF & CC in its reply as one of the key points for preparation of a comprehensive DSR for sand mining includes preparation of DSR, auditing of rivers and the necessity to prepare a DSR in such a way that it not only identifies the mineral bearing area but also defines the mining and no mining zones considering various environmental and social factors.

62. Next is the issue pertaining to the difference in lease areas and the quantum of mineable mineral in the DSR and the NIT, we find the explanation given by the State in this regard also to be quite unsatisfactory. This also requires to be considered in the light of the stand of the State that the DSR filed by the Applicant in O.A. No. 40/2020/EZ as being undated and,

therefore, not reliable. We find that a copy of a DSR has also been filed by the State as Annexure A-6 to its reply. Upon examination of the two DSRs, we find that in both the cases the last sentence in the conclusion reads as follows:

> *Conclusion of the DSR filed by the Applicant in O.A. No. 40/2020/EZ: "Since it is an interim report, it is proposed to identify such potential areas at certain interval and get the data bank of DSR to be updated."*
>
> *Conclusion of the DSR filed by the State Respondents in O.A. No. 40/2020/EZ:*
>
> *"Since it is an interim report, it is proposed to identify such potential areas at certain interval and get the data bank of DSR to be updated."*
>
> *[Underlining supplied]*

63. Both the DSRs are undated and are stated to have been prepared under para 7(iii) of S.O. 141(E) dated

15th January 2016, as amended on S.O.3611(E), dated 25th July 2018 of Ministry of Environment, Forest and Climate Change Notification. The only difference is that in the first part of the conclusion in the one filed by the Applicant, the total Sand Ghat area in the Chandan/ Chanan river has been mentioned as 226 ha with mineable mineral potential of 12,82,451.94 MT and 109 ha of area with 6,17,576.4 MT mineable mineral potential for Cheer river where the sand mining can be done. In the DSR filed by the State on the other hand, the total area for Sand Ghat has been mentioned as 719 ha with approximate mineable mineral potential of 35,36,236.94 MT in Chandan/Chanan, Cheer, Badua, Ribani, Dakai and Kudar river. The DSR filed by the State thus indicates that the total mineable area is 719 ha for 5 years in respect of the 6 rivers, i.e., Chandan/ Chanan, Cheer, Badua, Ribani, Dakai and Kudar.

64. However, in the NIT we find mention of four other rivers namely, Sukhania, Odhni, Darbashan and

Kurar river which do not figure in the DSR of the State and the mineable area. According to the Respondents, increase in the area to about 946 ha was on account of inclusion of the 7 remaining rivers mentioned in the auction at Sl. No. 8-14 which had been auctioned river-wise in terms of Clause 5(ii) of the Policy, 2019 being minor rivers and tributaries and not stretch-wise under Clause 5(i) of the said Policy providing for major rivers including Chandan/ Chanan. The mining leases in river Chandan/ Chanan at Sl. No. 1-7 was 719 ha but, the area had increased to 946 ha in the NIT due to inclusion of the minor river stretches of which those mentioned at Sl. No. 8-14 are some of them.

65. This explanation also does not appear to be satisfactory as we find that as per the DSR referred to by the State, with total mineable area has been shown as 719 ha, also includes other rivers besides Cheer and Chandan/ Chanan, namely, Badua, Ribani, Dakai and Kudar rivers.

66. Again, in the NIT, except for river

Chandan / Chanan, the other rivers mentioned therein are quite different from those referred to in the conclusion part of the DSR 2019.

68. The above manifests gross contradictions and inconsistencies in the version of the State with regard to the exercise undertaken by them for preparation of DSR 2019 in the manner adumbrated above. Such contradictions and inconsistencies unmistakably demonstrate want of the nature of studies implicit in the preparation of a DSR. The action of the State is apparently unguided, whimsical and arbitrary. The Sand Blocks appear to have been identified merely on the basis of visual assessment with the revenue of the State as the sole criteria as the report of DLC would reveal.

69. The aforesaid position gets further compounded against the State when we carefully examine the DSR 2018 filed by the State. We find that the said DSR contains three different categories of Sand Ghats-under the head "List of Mining Lease in the District" in Ch. No. 3. Ch. No. 3.3

contains (i) "List of Existing Sand Ghats as per Departmental Record" and (ii) "Proposed Sand Ghats (Potential Area)" under which there is also a separate head for "Potential Sand Ghats awaiting Statutory Clearances" which is the third one.

70. On a close examination, these lists belie the submission of the State that the minor rivers were being auctioned stream-wise, as we find that different blocks have been identified even in the minor rivers namely, Cheer, Badua, Odhni and Sukhaniya. Under the head "Proposed Sand Ghats (Potential Area)", we find that minor rivers namely, Kudar, Cheer and Dakai also have different Sand Blocks. In fact, river Cheer has as many as 9 Sand Blocks with varying mineable areas. Under the head "Potential Sand Ghats awaiting Statutory Clearance" we also find reference of different Sand Ghats in such rivers. For instance Badua has as many as 6 Sand Ghats, Odhni 2, Sukhania 4, Cheer 7, Kurar 2 and Darbashan 4 Sand Blocks with varying mineable areas in each of the

Sand Ghats.

79. The facts and circumstances set out above clearly indicate that firstly the permissible area for mining has grossly exceeded even going by the DSR 2019 filed by the State. Secondly, the mineable mineral has not been quantified in the NIT leaving it in the realm of speculation. We have already rejected the explanation of the State on the increase of the mineable area earlier and, therefore, need not delay ourselves on this except to observe that the stand of the Respondents has been inconsistent, contradictory and lacking in clarity.

81. Thus, the facts and circumstances would unmistakably imply that the Sand Ghats had been auctioned even before being included in the DSR as claimed by the State rendering the stand of the State seriously questionable.

84. As noted above, the manner in which the Sand Ghats have been identified and the gross inconsistencies in the stand of the State Government, we are of the firm

opinion that the process for DSR was still on and was yet to finalized as would be confirmed by the words "Interim report" at the end of the very DSR filed by the State.

101. For all the reasons aforesaid, we are of the firm view that the DSR 2019 and the other related exercise undertaken by the State fail to pass the muster of the Environmental Laws and the procedures laid down therefor.

102. In the result, we allow the applications and hold that:

(a) DSR 2018 cannot be considered as a final DSR and is only an Interim report.

(b) The DSR 2019 incorporating the 14 Sand Ghats also cannot be considered as a final DSR and is hereby quashed.

(c) All actions taken pursuant to DSR 2018 and DSR 2019 referred to in (a) and (b) above are hereby held to be void and a nullity.

103. In the light of the above

findings, we direct as follows:

(i) Having regard to the findings at (a), (b) and (c) above, we direct the State to undertake further exercise for preparation of a fresh DSR for the Banka district.

(ii) As the DEIAA is not functioning as a consequence of the decision of the Tribunal in Satendra Pandey (supra), the DSR shall be prepared through a consultant(s) accredited by the National Accreditation Board of Education and Training/ Quality Control Council of India in terms of O.M. of MoEF & CC dated 16.03.2010.

(iii) The DSR so prepared shall be submitted to the District Magistrate who shall verify the DSR only in respect of the relevant facts pertaining to the physical and geographical features of the district which shall be distinct from the scientific findings based on the

parameters prescribed in the SSMMG-2016. After such verification, the District Magistrate shall forward the DSR for examination and evaluation by the State Expert Appraisal Committee (SEAC) having regarding to the fact that the SEIAA comprises of technical/scientific experts. The SEAC after appraisal of the report shall forward it to the SEIAA for consideration and approval if it meets all scientific/technical requirements.

(iv) While preparing the DSR, the MoEF & CC Accredited Agency/Consultant shall scrupulously follow the procedure and the parameters laid down under the SSMMG-2016 and EMGSM-2020 read in sync with each other."

5. Thus, the learned senior counsel for the petitioner has contended that as per the provisions of clause-10 (ii) of the Tender Document and as per clause 17 & 23 of the Bihar Sand Mining Policy, 2019 as also Rules 17(4), 18(2) and 29(A)(1)(e)

of the Rules, 2019, the primary responsibility to prepare mining plan and obtain environmental clearance is that of the State Mining Department, hence it was obligatory upon the State Mining Department to have obtain environmental and other clearances in a time bound manner for the sand ghats which have been auctioned. It is stated that it is a matter of record that the State Mining Department has also taken a sum of Rs. One lac from the petitioner to get the mining plan prepared and approved, however, till date neither the mining plan has been prepared nor the same has been approved whereas on the contrary the National Green Tribunal in its judgment rendered in the case of Pawan Kumar (supra) has already held that the DSRs have not been prepared properly by the State of Bihar and are defective, as such no environment clearance can be granted to the State Mining Department. Consequently, mining plan and environmental clearance are not in existence as far as the sand ghat no. 32 at Aurangabad is concerned, which has been settled in favour of the petitioner, nonetheless, the respondent State has already taken security deposit from the petitioner to the tune of Rs. 3,20,50,000/- apart from having taken a sum of Rs. 27,48,000/- on the head of earnest money and a sum of Rs. one lac in the name of the Under Secretary of the Department, as

processing fees.

6. The learned senior counsel for the petitioner has further submitted that the oblique motive of the State Government is further clear from the fact that the letter of settlement, pursuant to the auction held by the respondent State pertaining to sand ghat no. 32 in the Aurangabad district, was issued to the petitioner on 30.12.2019, however, prior to that on 27.12.2019, the settlement period of the existing settlees of the sand ghats was extended from 31.12.2019 to 31.10.2020, circumventing the settlement made in favor of the petitioner. It is further pointed out that the illegal and arbitrary act of the respondent State did not stop there inasmuch as the said settlement period of the existing settlees of the sand ghats was further extended till 31.09.2021 *de hors* the order dated 14.10.2020 passed by the National Green Tribunal in the case of Pawan Kumar (supra), thus the respondent State has illegally extended the settlement period of the existing settlees of the sand ghats without there being any environmental clearance inasmuch as the DSR prepared by the respondent State has been held to be illegal.

7. The learned senior counsel for the petitioner has thus submitted that the respondent State has usurped/

misappropriated the money of the petitioner without having any intention of allowing the petitioner to conduct the mining activity at Aurangabad Sone sand ghat No. 32, hence the only way out for the petitioner is to seek refund of the earnest money, security money and the other amounts deposited by the petitioner for the purposes of settlement of Aurangabad Sone sand ghat No. 32, pursuant to the auction held in the year 2019 inasmuch as despite repeated request made by the petitioner, the respondent authorities have failed to issue work order in favour of the petitioner.

8. In this connection, the learned senior counsel for the petitioner has relied upon various judgments, which are being detailed hereinbelow along with their relevant paragraphs:-

(i) ***(1986) 3 SCC 156 (Central Inland Water Transport Corporation Ltd. & Anr. Vs. Brajo Nath Ganguly & Anr.),*** paragraph no. 89 whereof is relevant hereinbelow:-

> ***"89.*** *Should then our courts not advance with the times? Should they still continue to cling to outmoded concepts and outworn ideologies? Should we not adjust our thinking caps to match the fashion of the day?*

Should all jurisprudential development pass us by, leaving us floundering in the sloughs of 19th century theories? Should the strong be permitted to push the weak to the wall? Should they be allowed to ride roughshod over the weak? Should the courts sit back and watch supinely while the strong trample underfoot the rights of the weak? We have a Constitution for our country. Our judges are bound by their oath to "uphold the Constitution and the laws". The Constitution was enacted to secure to all the citizens of this country social and economic justice. Article 14 of the Constitution guarantees to all persons equality before the law and the equal protection of the laws. The principle deducible from the above discussions on this part of the case is in consonance with right and reason, intended to secure social and economic justice and conforms to the mandate of the great equality clause in Article 14. This principle is that the courts will not enforce and will, when called upon to do so, strike down an unfair and unreasonable contract, or

an unfair and unreasonable clause in a contract, entered into between parties who are not equal in bargaining power. It is difficult to give an exhaustive list of all bargains of this type. No court can visualize the different situations which can arise in the affairs of men. One can only attempt to give some illustrations. For instance, the above principle will apply where the inequality of bargaining power is the result of the great disparity in the economic strength of the contracting parties. It will apply where the inequality is the result of circumstances, whether of the creation of the parties or not. It will apply to situations in which the weaker party is in a position in which he can obtain goods or services or means of livelihood only upon the terms imposed by the stronger party or go without them. It will also apply where a man has no choice, or rather no meaningful choice, but to give his assent to a contract or to sign on the dotted line in a prescribed or standard form or to accept a set of rules as part of the contract, however unfair, unreasonable and unconscionable a

clause in that contract or form or rules may be. This principle, however, will not apply where the bargaining power of the contracting parties is equal or almost equal. This principle may not apply where both parties are businessmen and the contract is a commercial transaction. In today's complex world of giant corporations with their vast infrastructural organizations and with the State through its instrumentalities and agencies entering into almost every branch of industry and commerce, there can be myriad situations which result in unfair and unreasonable bargains between parties possessing wholly disproportionate and unequal bargaining power. These cases can neither be enumerated nor fully illustrated. The court must judge each case on its own facts and circumstances."

(ii) ***(2016) 13 SCC 561 (DDA v. Kenneth Builders & Developers (P) Ltd.)****,* paragraph nos. 14 and 28 to 36 whereof are reproduced herein below:-

"14. *Faced with this impasse and unable to obtain the Ridge*

Demarcation Report and therefore the "consent to establish" from DPCC, Kenneth Builders approached the Delhi High Court by way of a writ petition on 1-8-2009 resulting in the impugned judgment and order [Kenneth Builders & Developers Ltd. v. Union of India, 2010 SCC OnLine Del 2540]. In the writ petition, Kenneth Builders prayed, inter alia, for setting aside of the tender/auction notice dated 20-3-2006 as also the allotment letter dated 15-6-2006 and a declaration that the project was incapable of performance. It was further prayed that the auction had become void and that Kenneth Builders was entitled to a refund of the amount paid to DDA along with interest @ 18% p.a. till realisation.

28. *Be that as it may, it appears to us that Kenneth Builders did take all necessary steps to commence the construction activity on the project land but due to the impasse created by the governmental agencies, it could not proceed in the development activity. We agree with the learned counsel for Kenneth Builders that*

under these circumstances, the provisions of Section 56 of the Contract Act, 1872 (the Contract Act) would be attracted to the facts of the case.

29. *Section 56 of the Contract Act reads as follows:*

*"**56. Agreement to do impossible act**.—An agreement to do an act impossible in itself is void.*

***Contract to do act afterwards becoming impossible or unlawful**.—A contract to do an act which, after the contract is made, becomes impossible, or, by reason of some event which the promisor could not prevent, unlawful, becomes void when the act becomes impossible or unlawful.*

***Compensation for loss through non-performance of act known to be impossible or unlawful**.—Where one person has promised to do something which he knew, or, with reasonable diligence, might have known, and which the promisee did not know, to be impossible or unlawful, such promisor must make compensation to such promisee for any loss which such*

promisee sustains through the non-performance of the promise."

30. *The interpretation of Section 56 of the Contract Act came up for consideration in Satyabrata Ghose v. Mugneeram Bangur & Co. [Satyabrata Ghose v. Mugneeram Bangur & Co., AIR 1954 SC 44 : 1954 SCR 310] It was held by this Court that the word "impossible" used in Section 56 of the Contract Act has not been used in the sense of physical or literal impossibility. It ought to be interpreted as impracticable and useless from the point of view of the object and purpose that the parties had in view when they entered into the contract. This impracticability or uselessness could arise due to some intervening or supervening circumstance which the parties had not contemplated. However, if the intervening circumstance was contemplated by the parties, then the contract would stand despite the occurrence of such circumstance. In such an event, "there can be no case of frustration because the basis of the contract being to demand performance despite the happening of*

a particular event, it cannot disappear when that event happens". This is what this Court had to say: (AIR pp. 46-49, paras 9-10 & 17)

"9. The first paragraph of the section lays down the law in the same way as in England. It speaks of something which is impossible inherently or by its very nature, and no one can obviously be directed to perform such an act. The second paragraph enunciates the law relating to discharge of contract by reason of supervening impossibility or illegality of the act agreed to be done. The wording of this paragraph is quite general, and though the illustrations attached to it are not at all happy, they cannot derogate from the general words used in the enactment.

This much is clear that the word "impossible" has not been used here in the sense of physical or literal impossibility. The performance of an act may not be literally impossible but it may be impracticable and useless from the point of view of the object and purpose which the parties had in view; and if an untoward event or

change of circumstances totally upsets the very foundation upon which the parties rested their bargain, it can very well be said that the promisor finds it impossible to do the act which he promised to do.

10. Although various theories have been propounded by the Judges and jurists in England regarding the juridical basis of the doctrine of frustration, yet the essential idea upon which the doctrine is based is that of impossibility of performance of the contract; in fact impossibility and frustration are often used as interchangeable expressions. The changed circumstances, it is said, make the performance of the contract impossible and the parties are absolved from the further performance of it as they did not promise to perform an impossibility.

The parties shall be excused, as Lord Loreburn says [F.A. Tamplin Steamship Co. Ltd. v. Anglo-Mexican Petroleum Products Co. Ltd., (1916) 2 AC 397 (HL)] : (Tamplin case [F.A. Tamplin Steamship Co. Ltd. v. Anglo-Mexican Petroleum Products Co. Ltd.,

(1916) 2 AC 397 (HL)] , AC p. 406)

'... If substantially the whole contract becomes impossible of performance or in other words impracticable by some cause for which neither was responsible.'

***

17. It must be pointed out here that if the parties do contemplate the possibility of an intervening circumstance which might affect the performance of the contract, but expressly stipulate that the contract would stand despite such circumstance, there can be no case of frustration because the basis of the contract being to demand performance despite the happening of a particular event, it cannot disappear when that event happens. As Lord Atkinson said in Matthey v. Curling [Matthey v. Curling, (1922) 2 AC 180 (HL)]:(AC p. 234)

'... a person who expressly contracts absolutely to do a thing not naturally impossible is not excused for non-performance because of being prevented by the act of God or the

King's enemies ... or vis major.'

This being the legal position, a contention in the extreme form that the doctrine of frustration as recognised in English law does not come at all within the purview of Section 56 of the Contract Act cannot be accepted."

(emphasis supplied)

31. *Insofar as the present case is concerned, DDA certainly did not contemplate a prohibition on construction activity on the project land which would fall within the Ridge or had morphological similarity to the Ridge. It is this circumstance that frustrated the performance of the contract in the sense of making it impracticable of performance.*

32. *It is true that the Government of India had notified the project land as "residential" and that the project land was shown as "residential" in MPD, 2001 and MPD, 2021. But that fact alone would not change the position at law. The exact boundaries of the Ridge do not appear to have been demarcated and in the absence of demarcation, it could not be*

said with any degree of certainty by DDA that merely because of the two notifications issued by the Ministry of Urban Development the project land could be used for residential purposes even if it fell within the Ridge. This would be ignoring the position at law and would be stretching the argument a little too far. DDA was unaware that even if the project land did not fall within the Ridge yet any development activity thereon would require permission from the Ridge Management Board as well as from this Court since there was morphological similarity between the Ridge and the project land. It is this intervening circumstance which eventually frustrated the implementation of the contract.

33. *It is one thing for DDA to now contend before us that Kenneth Builders could have applied to the Ridge Management Board for permission to carry out development activity and also approached this Court for necessary permission but it is another thing to say that these requirements were not within the contemplation of DDA and certainly not within the con-*

templation of Kenneth Builders. For a statutory body like DDA to contend that in the face of the legal position (with which DDA obviously does not agree), Kenneth Builders ought to have persisted and perhaps initiated or invited litigation cannot be appreciated.

34. *When DDA informed Kenneth Builders that the project land was available on an "as is where is basis" and that it was the responsibility of the developer to obtain all clearances, the conditions related only to physical issues pertaining to the project land and ancillary or peripheral legal issues pertaining to the actual construction activity, such as compliance with the building bye-laws, environmental clearances, etc. The terms and conditions of "as is where is" or environmental clearances emphasised by the learned counsel for DDA certainly did not extend to commencement of construction activity prohibited by law except after obtaining permission of the Ridge Management Board and this Court. On the contrary, it was the obligation of DDA to ensure that the*

initial path for commencement of construction was clear, the rest being the responsibility of the developer. The failure of DDA to provide a clear passage due to an intervening circumstance beyond its contemplation went to the foundation of implementation of the contract with Kenneth Builders and that is what frustrated its implementation.

35. *Reliance by the learned counsel for DDA on the "as is where is" concept as well as Clauses 6 and 11 of the Development Agreement in this context is misplaced. As mentioned above, this primarily pertains to physical issues at site. This is clear from the following passage referred to by the learned counsel from Punjab Urban Planning & Development Authority v. Raghu Nath Gupta [Punjab Urban Planning & Development Authority v. Raghu Nath Gupta, (2012) 8 SCC 197 : (2012) 4 SCC (Civ) 397] : (SCC p. 201, para 14)*

"14. ... Evidently, the commercial plots were allotted on "as-is-where-is" basis. The allottees would have ascertained the facilities avail-

able at the time of auction and after having accepted the commercial plots on "as-is-where-is" basis, they cannot be heard to contend that PUDA had not provided the basic amenities like parking, lights, roads, water, sewerage, etc. If the allottees were not interested in taking the commercial plots on "as-is-where-is" basis, they should not have accepted the allotment and after having accepted the allotment on "as-is-where-is" basis, they are estopped from contending that the basic amenities like parking, lights, roads, water, sewerage, etc. were not provided by PUDA when the plots were allotted. Over and above, the facts would clearly indicate that there was not much delay on the part of PUDA to provide those facilities as well. As noted, the electrical works and health works were completed by 24-12-2002 and 22-11-2002 respectively and all the facilities like parking, lights, roads, water, sewerage, etc. were also provided."

36. *On a conspectus of the facts and the law placed before us, we are satisfied that certain circumstances*

had intervened, making it impracticable for Kenneth Builders to commence the construction activity on the project land. Since arriving at some clarity on the issue had taken a couple of years and that clarity was eventually and unambiguously provided by the report of CEC, it could certainly be said that the contract between DDA and Kenneth Builders was impossible of performance within the meaning of that word in Section 56 of the Contract Act. Therefore, we reject the contention of DDA that the contract between DDA and Kenneth Builders was not frustrated."

(iii) Judgment dated 28.06.2018 rendered by the learned single Judge of the Hon'ble Jharkhand High Court in ***W.P.(C) No. 7226 of 2017 (Raj Kumar Gupta vs. State of Jharkhand & others)***, paragraph no. 8 whereof is reproduced herein below:-

"8. Considering the aforesaid facts and circumstance, the respondents are directed to immediately refund the amount of settlement received from the petitioner after deducting the proportionate

amount for one month during which the petitioner is alleged to have lifted the sand."

(iv) Judgment dated 21.02.2018 rendered by the learned single Judge of the Hon'ble Jharkhand High Court in ***W.P.(C) No. 486 of 2017 (M/s Dhanbad Wine vs. The State of Jharkhand &Ors.)***, paragraph nos. 7 to 10 whereof are reproduced herein below:-

"7. Vide order dated 23.01.2018, learned counsel for the respondent no. 3 was directed by this Court to file supplementary counter affidavit bringing on record the final order passed by the National Green Tribunal, Eastern Zone Bench, Kolkata in O.A. No. 108 of 2015/EZ (Niranjan Sharma and others Vs. Ministry of Environment, Forest and others). The respondent no.3 was further directed to specify as to whether the Environment Clearances are being issued for the sand mining projects in Geruwariver in District-Godda. In pursuance of the order dated 23.01.2018, a supplementary counter affidavit has been filed on behalf of the respondent no. 3 stating in para-

graph-5 that the Assistant Mining Officer, Godda (the respondent no. 5) vide letter no. 269/M dated 05.02.2018, informed the Member Secretary of SEIAA, Jharkhand (respondent no.3) that no Environment Clearance is being given to any Sand Mining Project in River Geruwa in the District of Godda as there is no sand ghat settlement in the said river.

8. A copy of the order dated 09.11.2017 passed by the NGT, Kolkata in O.A. No. 108 of 2015/EZ has also been annexed as Annexure-B to the said supplementary counter affidavit filed on behalf of the respondent no.3. On perusal of the said order, it appears that the learned NGT, Kolkata has observed that during the pendency of the said case, the state respondents in due compliance of the directions of the Tribunal, has withdrawn mining leases and licences earlier granted in violation of the directions of the Hon'ble Supreme Court. Moreover, disciplinary proceedings under relevant service rules have also been initiated against the officers who were responsible for granting such

leases and licences.

9. In the present writ petition, the petitioner's prayer is confined to the issue of forfeiture of its security deposit and 40 % of the bid amount at the instance of the respondent no.2. It is a settled law that the order of forfeiture of security deposit cannot be passed in violation of the principles of natural justice. On perusal of the impugned show cause notice contained in letter No. 1393/M dated 29.11.2010, it appears that in the said show cause notice itself, the respondent no.2 has mentioned that the NGT, Kolkata in O.A No. 108/2015/EZ has directed for cancellation of settlement of the sand ghats. The petitioner in its reply to the said show cause notice explained the reason for not submitting the environment clearance by stating that in view of pendency of O.A No. 108/2015/EZ, the SEIAA was not granting the environment clearance. However, while passing the impugned order of termination of settlement of sand ghat as well as forfeiture of security and 40 % of the bid amount, the respondent no. 2 has not dealt with the

said reply of the petitioner and has passed the impugned order in a cryptic manner. The entire exercise by the respondents indicate that the said action was taken as mere formality and they appear to have started the proceeding with a pre-occupied notion. The compliance of principles of natural justice is not a mere formality, rather the same must be followed in true sense. One of the essential requirements of the principles of natural justice is due consideration of the reply of the delinquent, which has not been followed in the present case. Though, learned counsel for the respondent no. 3 has submitted that no application was received from the petitioner for grant of environment clearance, the same would not have changed the position as it is the specific stand of the respondent no.3 that at the relevant time, the environment clearance was not being granted in view of the orders passed by the NGT, Kolkata in O.A No. 108/2015/EZ. Thus, the petitioner cannot be held responsible for not submitting the environment clearance before the respon-

dent authorities as per the terms and conditions of the public auction notice.

10. Under the aforesaid facts and circumstance, the impugned Letter No. 1423/M dated 03.12.2016 is quashed to the extent of forfeiture of security money and 40 % of the bid amount deposited by the petitioner. The respondents are directed to refund the amount deposited by the petitioner as security money and 40 % of the bid amount for settlement of the sand ghat forthwith."

(v) Judgment dated 15.01.2018, rendered by the learned single Bench of the Hon'ble Patna High Court in ***CWJC No. 13618 of 2017 (M/s. Sainik Food Private Limited & Ors. vs. The State of Bihar &Ors.)***, relevant paragraphs whereof are reproduced herein below:-

"It is undisputed rather an admitted position that except for the report issued by the Circle Officer vide letter bearing No. 395 dated 8.6.2017 which in turn referred to the report of the Revenue Karamchari and was forwarded by the Assistant Director,

Mines and Geology through letter No.1623 dated 9.8.2017 on the directions of the District Magistrate passed on 7.8.2017,copies of which are present at Annexure-24 to the writ petition, there is no certificate issued by the District Magistrate, Gaya. A plain reading of the directions of "SEAC" would confirm that the report of the Circle Officer had to be routed through the District Magistrate, Gaya. It is unfortunate that despite reminders given by the petitioner to the District Magistrate cum Collector, Gaya to discharge this obligation on 10.2.2017 vide Annexure-16, on 29.6.2017 vide Annexure-21 and lastly on 5.9.2017 vide Annexure-25 yet he failed to appreciate his obligation and instead proceeded to issue a show cause notice to the petitioner under Rule 25(1), 21(5) of "the Rules" read alongside Clause 7(ii) of the Notice Inviting Tender vide Notice dated 6.9.2017 at Annexure 26 and which is followed by the cancellation order dated 12.10.2017 upholding the allegations vide Annexure-28. It is unfortunate that the District Magistrate, Gaya even after taking note of the di-

rection of the "SEAC" in paragraph 8 of the impugned order at running page 144 of the proceedings and although refers to his order dated 7.8.2017 but it is admitted by learned counsel for the respondents that the order dated 7.8.2017 referred to by the Collector in the impugned order is an order passed in the file and no formal orders were issued on 7.8.2017.

The fact remains that at the first instance, the delay has been caused by the "SEIAA" in granting Environmental clearance to the petitioner which remained pending since 17.6.2015 when the petitioner applied for environmental clearance and even when the "SEAC" a Sub committee of the "SEIAA" put the matter in motion and reiterated its direction of production of a certificate issued by the Circle Officer of the Area through the District Magistrate regarding the status of habitation and following which repeated reminders were given by the petitioner but the District Magistrate, Gaya has failed in his duty, rather has shifted the onus on the petitioner when in fact the default is by the District

Magistrate, Gaya. A plain reading of the obligations to be discharged by the petitioner as present at paragraph 7(ii) of the Notice Inviting Tender would confirm that the petitioner could not have proceeded without obtaining an environmental clearance as present at paragraph 7(ii)([k) for making the deposits which were consequent upon obtaining the environmental clearance after approval of the Mining plan. Obviously, when the "SEAC" required the petitioner to produce a report from the Circle Officer through the District Magistrate as regarding the status of the habitation, the object was clear because a report duly certified by the District Magistrate on the issue of habitation within an area of 500 meters of the project area had the authenticity attached to it. Unfortunately, the District Magistrate, Gaya has failed to appreciate this object and in absence whereof the report of the Circle Officer failed to satisfy the "SEAC". The petitioner was a looser from either side. The "SEAC" would not proceed without obtaining a habitation certificate from the District

Magistrate, Gaya and the District Magistrate, Gaya without discharging his obligation, charges the petitioner of statutory violation.

The default is entirely attributable to the District Magistrate, Gaya for the prejudice caused to the petitioner for which the application of the petitioner for Environmental Clearance remains pending awaiting the certificate from the District Magistrate. The delay has led to a situation where the "SEIAA" itself stands dissolved. In my opinion, in the circumstances discussed, neither the petitioner can be held guilty of violation of Rule 25(1) and 21(5) of "the Rules" nor he can be held guilty of violation of paragraph 7(ii) of the Conditions of Notice Inviting Tender.

The circumstances discussed leave no room for confusion that the District Magistrate cum Collector, Gaya is solely responsible for failing the petitioner to complete his exercise of producing the Environmental Clearance. The irony is that perpetuating the illegality, the District Magis-

trate, Gaya in gross abuse of statutory powers has cancelled the letter of acceptance of the petitioner for a default which is entirely attributable to him.....

It is noticed that the report submitted by the Circle Officer, Manpur through his letter No.395 dated 8.6.2017 which was forwarded by the Assistant Director, Mines and Geology through letter dated 9.8.2017 at Annexure-24 to the writ petition is not a report of the Circle Officer rather he merely encloses the report of a Revenue Karamchari and thus the report is not in tune with the directions of the "SEAC" which requires a report prepared by the Circle Officer himself on verification of the situation and issued through the District Magistrate. The petitioner has been wronged by the District Magistrate, Gaya, who having failed to discharge his own duty to issue the habitation certificate which has deprived the petitioner of the mandatory Environmental Clearance, he has encashed his default by holding the petitioner guilty of statutory viola-

tions.

For the reasons so discussed above, the show cause notice dated 6.9.2017 of the District Magistrate cum Collector, Gaya impugned at Annexure-26 together with the order of cancellation of the letter of acceptance and forfeiture of the security deposit bearing Memo No.2258 dated 12.10.2017 impugned at Annexure 28, cannot be upheld and are accordingly quashed and set aside. The District Magistrate cum Collector Gaya is directed to issue the habitation certificate in tune with the direction of the State Level Expert Appraisal Committee, after obtaining a report from the Circle Officer, Manpur, afresh within 6 weeks of receipt/production of a copy of this judgment.

The writ petition is allowed with the direction aforementioned."

9. Per contra, the learned Special P.P. Mines Shri. Naresh Dixit has submitted that there is no provision for refund of the amount in question, in the entire tender documents and the terms and conditions mentioned therein, hence the

respondents are not in a position to make any refund to the petitioner. Nonetheless, it is submitted that the respondent State has challenged the judgment rendered by the National Green Tribunal in the case of Pawan Kumar (supra), before the Hon'ble Apex Court vide C.A. No. 3661 of 2020, hence the only option for the petitioner is to await the final disposal of the said case by the Hon'ble Supreme Court of India. It is submitted that without a valid and legal DSR, environmental clearance cannot be obtained, hence the respondent State is also not in a position to issue any work order to the petitioner with regard to the sand ghats settled in his favour, thus the only option for the petitioner is to wait for the verdict of the Hon'ble Apex Court.

10. Per contra, the learned counsel for the State Shri. Gyan Prakash Ojha, GA-7 has referred to the various counter affidavits filed on behalf of the State and has submitted that the E-auction for the Aurangabad district was held on 26.12.2019 and auction of 16 sand ghats was finalized vide order dated 30.12.2019 in favour of the petitioner inasmuch as he was declared as the highest bidder for the Aurangabad Sone sand ghat No. 32, subject to the condition that the work order will be issued only after obtaining the environmental clearance. It is further submitted that as per the prevailing provisions, no lease

can be executed in favor of the successful bidder/settlee, unless the mining plan is prepared and the environmental clearance is obtained, as is required under the Rules, 2019. It is also submitted that it takes up 270 days to get the environmental clearance. As far as the issue of extension of the settlement period of the existing settlees is concerned, it has been submitted that the same has been done in order to protect the interest of the public at large and that too with an increase of 50 per cent in the settlement amount for the calendar year 2019. It is submitted that the petitioner has been authorized by the department to take necessary action regarding grant of environmental clearance, which is his sole responsibility, but nothing has been done by him, hence the respondent State cannot be faulted. The learned counsel for the respondent State has also adopted the arguments advanced by the learned Special P.P. Mines and has admitted that environmental clearance cannot be obtained without a valid DSR and the DSRs pertaining to the State of Bihar have been declared to be illegal by the National Green Tribunal in the case of Pawan Kumar (supra), which has been challenged before the Hon'ble Apex Court by the respondent State, hence the petitioner will have to await the final outcome of the pending appeal before the Hon'ble Apex

Court. It is also submitted that there is no provision of refund of money deposited by the petitioner.

11. The learned counsel for the private respondent no. 8 Shri. Suraj Samdarshi has submitted that since the petitioner is not challenging the continuance of the respondent no. 8 as a Settlee of the Aurangabad Sone sand ghat No. 32 and he is only seeking refund of the sums deposited by him with the respondent State, he has got nothing to say.

12. As far as the State Environmental Impact Assessment Authority, Bihar (SEIAA), is concerned, its learned counsel Shri Kumar Ravish, has submitted that first of all the tenure of SEIAA has expired and secondly no relief has been sought for by the petitioner as against the SEIAA and the petitioner has challenged the decision taken by the State Government, by which the period of settlement of sand Ghats pertaining to the existing settlees has been extended as also has sought refund of the amount deposited by him with the respondent-State, hence SEIAA has got no role to play in the present case.

13. I have heard the learned counsel for the parties and perused the materials on record from which it is apparent

that certain facts are not in dispute inasmuch as admittedly the E-auction of the sand ghats pertaining to Aurangabad district was held on 26.12.2019, whereafter the settlement of 16 sand ghats were finalized vide order dated 30.12.2019, in favor of the petitioner since he was the highest bidder for the Aurangabad Sone Sand Ghat No. 32. Thereafter, the Mineral Development Officer, Aurangabad had issued a letter dated 30.12.2019 directing the petitioner to deposit a sum of Rs. 3,20,50,000/-, being the auction amount/security deposit, qua the settlement of the sand ghats in question, which the petitioner is stated to have deposited apart from having deposited a sum of Rs. 27,48,000/- on the head of earnest money and a sum of Rs. one lakh in the name of the Under Secretary of the Department by way of processing fees. It is also an admitted position that as per clause-9 of the Tender Document, the settlement of sand ghats was to be valid for a period of five years, starting from 01.01.2020, however, despite the respondent Mines Department having taken the security deposit, earnest money and the processing fees etc. from the petitioner herein, it failed to either issue the work order or execute the mining lease and the same position is prevailing till date. On the contrary, the Special Secretary-cum-Director, Mines & Geology Department, Government of Bihar,

by a letter dated 27.12.2019 had extended the settlement period of the sand ghats in question, qua the existing settlees, in the State of Bihar, which was ending on 31.12.2019, till 31.10.2020 and the said period was subsequently, vide press communiqué dated 29.12.2020, extended till 31.03.2021 and then the same was further extended up to 31.09.2021, thus rendering the settlement made in favour of the petitioner and other similarly situated settlees nugatory. This Court, thus, finds that first of all, since the respondent Mines Department had received the full amount of security deposit, earnest money, processing fees etc. from the petitioner, it was obliged to issue the work order to the petitioner and execute the mining lease with effect from 01.01.2020 but in an arbitrary and illegal manner, the same was obliterated and secondly the intention of the respondent Mines Department was/is also clear from its act of extending the existing settlement of the sand ghats in question qua the existing settlees, which had expired on 31.12.2019, firstly up to 31.10.2020, then up to 31.03.2021 and finally up to 31.09.2021. Thus it is apparent from the deeds of the respondent-State/the respondent Mines Department that it had never intended to either issue any work order or execute mining lease qua the petitioner herein but had still clandestinely got the security

deposit, earnest money and the processing fees etc. deposited from the petitioner, apparently only with a view to usurp and misappropriate the same resulting in its unjust enrichment at the cost of the petitioner and to his detriment. This Court further finds that the only plea taken by the Mines Department as also by the respondent-State for not issuing the work order to the petitioner with regard to the sand ghats settled in his favour is that on account of the judgment rendered by the National Green Tribunal in the case of Pawan Kumar (supra), since the DSRs pertaining to the State of Bihar have been declared to be illegal, no environmental clearance can be obtained, hence unless and until a valid mining plan is prepared and the environmental clearance is obtained, no lease can be executed in favour of the successful bidders/settlees/the petitioner herein.

14. This Court, at this juncture, deem it appropriate to refer to clause 10 (ii) of the Tender Document in question which clearly states that the mining plan is required to be prepared and endorsed by the department as per the prevailing rules by means of an agency and the expenditure meted out shall be realized from the concerned settlees. This Court, thus, finds that as per the provision contained in clause 10 (ii) of the Tender Document as also as per clause 17 & 23 of the Bihar Sand Mining Policy,

2019 as also Rules 17(4), 18(2) and 29(A)(1)(e) of the Rules, 2019, the primary responsibility to prepare mining plan and obtain environmental clearance is that of the State Mining Department. It is thus clear that the State Mining Department has miserably failed to comply with its statutory obligations not only under the Tender Document but also under the Act, 1957, Rules, 2019 and the Bihar Sand Mining Policy, 2019. This Court also finds that the respondent-State/the respondent Mines Department had been extending the settlement period of the sand ghats qua the existing settlees in the State of Bihar from time to time and in fact the settlement period of the existing settlees which was to expire on 31.12.2019 was extended for the very first time, by a letter dated 27.12.2019, issued by the Special Secretary-cum-Director, Mines & Geology Department, Government of Bihar, prior to even accepting the security deposit to the tune of Rs. 3,20,50,000/- and other amounts from the petitioner herein for the purposes of settlement of the sand ghats for a period of five years with effect from 01.01.2020 as per clause-9 of the tender document, hence it is clear that the intention of the respondent-State was deceitful and dishonest from the very inception. In case the respondent-State/ the respondent Mines Department knew that neither the work order

could be issued to the petitioner nor the mining lease could be executed in his favour, it should not have accepted the aforesaid amount from the petitioner herein. It is a trite law that a wrong doer ought not be permitted to make profit out of his own wrong. In this connection, it would be relevant to refer to a judgment rendered by the Hon'ble Apex Court in the case of ***Kusheshwar Prasad Singh vs. State of Bihar*** reported in ***(2007) 11 SCC 447***, paragraph nos. 12, 13, 14 and 16 whereof are reproduced herein below:-

> *"12. Having considered the rival submissions of the learned counsel for the parties, in our opinion, the appeal deserves to be partly allowed. So far as the contention of the appellant that the proceedings had been initiated in 1973-1974 and final order was passed on 7-1-1976 is not disputed and cannot be disputed. If it is so, submission of the appellant is well founded that final statement as required by sub-section (1) of Section 11 ought to have been issued and effect ought to have been given to the final order. Admittedly, no appeal was filed. Nor the order was challenged by any party. The appellant is right in contending that*

final statement ought to have been issued immediately or in any case within "reasonable time". The authority cannot neglect to do that which the law mandates and requires doing. By not issuing consequential final statement under Section 11(1) of the Act, the authority had failed to discharge its statutory duty. Obviously, therefore, the appellant is justified in urging that such default in discharge of statutory duty by the respondents under the Act cannot prejudice him. To that extent, therefore, the grievance of the appellant is well founded.

13. The appellant is also right in contending before this Court that the power under Section 32-B of the Act to initiate fresh proceedings could not have been exercised. Admittedly, Section 32-B came on the statute book by Bihar Act 55 of 1982. The case of the appellant was over much prior to the amendment of the Act and insertion of Section 32-B. The appellant, therefore, is right in contending that the authorities cannot be allowed to take undue advantage of their own default in failure to act in accordance with law and

initiate fresh proceedings.

14. In this connection, our attention has been invited by the learned counsel for the appellant to a decision of this Court in Mrutunjay Pani v. Narmada Bala Sasmal [AIR 1961 SC 1353] wherein it was held by this Court that where an obligation is cast on a party and he commits a breach of such obligation, he cannot be permitted to take advantage of such situation. This is based on the Latin maxim commodum ex injuria sua nemo habere debet (no party can take undue advantage of his own wrong).

16. It is settled principle of law that a man cannot be permitted to take undue and unfair advantage of his own wrong to gain favourable interpretation of law. It is sound principle that he who prevents a thing from being done shall not avail himself of the non-performance he has occasioned. To put it differently, "a wrongdoer ought not to be permitted to make a profit out of his own wrong."

15. This Court would also refer to a judgment

rendered by the Hon'ble Apex Court in the case of ***Jai Durga Finvest Pvt. Ltd. vs. State of Haryana & Ors.*** reported in ***(2004) 3 SCC 381***, paragraph nos. 10 to 12 whereof are reproduced herein below:-

> *"10. The question, thus, which was required to be posed and answered was as to whether clause 18-A of the agreement would remain enforceable despite the fact that the appellant allegedly could not extract any sand by reasons of omission and commission on the part of the respondents concerned. The appellant herein has raised a plea that the contract became impossible to be performed as the landowners of the area in question did not receive compensation and despite request, the third respondent did not enforce clause 27 of the agreement.*
>
> *11. It is not in dispute that the grant of mining lease in favour of the appellant herein for the extraction of mineral sand by the respondents is governed by the provisions of the Punjab Minor Mineral Concession Rules, 1964. In terms of Rule 33 the bidder is required to execute a deed in Form 'L'. Clause*

27 of the agreement in Form 'L' obligates the respondents to comply with the request made in terms thereof. The Appellate Authority had not considered this aspect of the matter. The High Court also did not apply its mind in this behalf. The first question that arises is whether the respondents complied with their statutory obligations when the request was made by the appellant. If not, the second question would be the effect of non-compliance with the statutory obligation of the respondents which formed part of the contract insofar as they did not comply with the appellant's request as aforementioned which had a direct bearing on the right of the appellant to raise sand. The High Court, as noticed hereinbefore, has merely proceeded on the basis that the appellant had entered into the contract with his eyes wide open; but, the same would not, in our opinion, mean that they were bound to pay the contract amount, get its security amount forfeited, as also pay interest at the rate of 24 per cent, although it could not, by reason of acts of omission and commission on the part of the respon-

dents, carry out the mining operation as per the terms of the agreement.

12. Whether in such a situation the doctrine of frustration will be invoked or not should have been considered by the High Court. [See M.D., Army Welfare Housing Organisation v. Sumangal Services (P) Ltd. [(2003) 8 Scale 424 (2)]]"

16. This Court is not oblivious of the fact that the aforesaid judgment rendered by the learned National Green Tribunal, Principal Bench, New Delhi in the case of Pawan Kumar (supra) has been challenged by the respondent-State before the Hon'ble Apex Court by preferring an Appeal bearing Civil Appeal No. 3661-3662 of 2020 and the Hon'ble Apex Court by an interim order dated 10.11.2021 has substituted the aforesaid directions issued by the learned Tribunal vide judgment and order dated 14.10.2020, with the following directions which are contained in paragraph No. 15 thereof and are being reproduced herein below:-

"14. We therefore find it appropriate to substitute the directions issued by the Tribunal vide judgment and order dated 14th October 2020, with the fol-

lowing directions:

(i) 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 SubDivisional 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 concerned District shall forward the same for examination and evaluation by the SEAC. The same shall be examined by the SEAC within a period of 6 weeks and its report shall be forwarded to the SEIAA within the aforesaid period of 6 weeks from the receipt of it. The SEIAA will thereafter consider the grant of approval to such DSRs within a period of 6 weeks from the receipt thereon;

(ii) 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;

(iii) 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."

17. At this juncture, it may be stated that the aforesaid order dated 10.11.2021 passed by the Hon'ble Apex Court in Civil Appeal No. 3661-3662 of 2020 would have no bearing on the case in hand inasmuch as the facts and circumstances of the present case are distinguishable, moreso since the issue under consideration is discernible.

18. Having considered the rival submissions of the learned counsel for the parties, this Court is of the considered

view that an obligation had been casted on the respondent-State/the respondent Mines Department, not only to prepare the mining plan and obtain the environmental clearance but also to issue work order to the petitioner, who is a successful bidder and execute a mining lease in his favor, more so after the respondent-State/the respondent Mines Department had got the security money, earnest money and other amounts deposited from the petitioner for the purposes of settlement of the sand ghats in question for a period of five years with effect from 01.01.2020 as per clause-9 of the tender document, however, the respondent-State/the respondent Mines Department has committed a breach of such statutory obligation, hence it cannot be permitted to take advantage of such a situation and make a profit out of its own wrong, thus the only just and legal course left to this Court, to set right the wrong, is to direct the respondent-State/the respondent Mines Department to refund the security money, earnest money and processing fees deposited by the petitioner for the purposes of being granted settlement of Aurangabad Sone Sand Ghat No. 32, pursuant to the E-auction held on 26.12.2019, along with interest @ of 9% per annum with effect from the day, the said amounts were deposited, till the date of payment, especially considering the

fact that the respondent-State/the respondent Mines Department has illegally and in an unjust manner retained the aforesaid amount deposited by the petitioner. It is directed accordingly.

19. Having regard to the facts and circumstances of the case and for the reasons mentioned herein above, the present writ petition stands allowed to the aforesaid extent.

(Mohit Kumar Shah, J)

S.Sb/-

AFR/NAFR	AFR
CAV DATE	29.06.2021
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Transmission Date	