BEFORE THE NATIONAL GREEN TRIBUNAL
PRINCIPAL BENCH
NEW DELHI

Original Application No. 148/2015
(M.A. No. 634/2015)

IN THE MATTER OF:

Lt. Gen. Satyevir Yadav (Retd)
1071, Skylark Apartments, Sector 6
Dwarka
New Delhi-110075

..... Applicant

Versus

1. Union of India
Through Secretary
Ministry of Environment and Forest
Government of India
Indira Paryavaran Bhawan,
Jor Bagh Road
New Delhi-110003

2. The State of Haryana
Through its Chief Secretary,
Government of Haryana,
Civil Secretariat, Sector-1,
Chandigarh

3. Department of Forest
Government of Haryana
Civil Secretariat, Sector-1
Chandigarh, 160001

4. Department of Mines and Geology
Through Director
30-Bays Building, Sector-17-C
Chandigarh

5. Haryana State Pollution Control Board
Through its Member Secretary
C-11, Secor-6
Panchkula,
Haryana

6. Deputy Commissioner
DC Office, Narnaul
District Mahendragarh
Haryana, 123001

7. Divisonal Forest Officer
DFO Office, Narnaul
District Mahendragarh
Haryana, 123029

8. District Mining Officer
District Mining Office
Narnaul, Mahendrgarh District
Haryana, 123001

9. Satish Kumar, Mines Lease Owner
Village Mukandpura,
A-22, Industrial Area Narnaul
Haryana, 1133001

…….Respondents

COUNSEL FOR APPLICANT:
Mr. Sanjay Upadhyay, Mr. Salik Shafique, Advs.

COUNSEL FOR RESPONDENTS:

Mr. Anil Grover, AAG with Mr. Rahul Khurana and Mr. Sandeep Yadav, Advs. for respondent no.2 to 8
Mr. S. P. Sharma, Mr. Ankit Goel, advs. For respondent no.9

JUDGEMENT

PRESENT:

Hon'ble Mr. Justice Raghuvendra S. Rathore (Judicial Member)
Hon'ble Mr. Ranjan Chatterjee (Expert Member)

Reserved on: 20th March, 2017
Pronounced on: 30th May, 2017

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1. Whether the judgment is allowed to be published on the net?
2. Whether the judgment is allowed to be published in the NGT Reporter?

RAGHUVENDRA S. RATHORE (JUDICIAL MEMBER) J

1. The present application has been filed under Section 14, 16 and 18 (1) of the National Green Tribunal Act, 2010.

The applicant is a retired member of Indian Army. After retirement from service in the year 2008, he has settled at Dwarka, in the Union Territory of Delhi. He is also said to maintain his links with the village. During his visits in the

rural areas, he primarily guides the people (ex-servicemen) on social problems of post retirement, employment opportunities, pension, medical, education to the children and other entitlements. Additionally, he also counsels the unemployed youth on job/service and employment prospects.

2. During his visits to the rural areas, the applicant came to know about encroachment on forest land, illegal mining and violations of environmental laws by the respondents. Hence, applicant decided to file an application before the Tribunal for stopping the aforesaid illegal activities and to set an example that the same should not be allowed by the regulatory authorities, particularly, the other respondents. Every effort should be made to protect the Aravali, and more particularly, in the village of the applicant. Accordingly, the applicant has prayed to this Tribunal in the following manner:

"(a). direct/order closure of all mining activities of respondent no.9 in village Mukandpura, sub-division Narnaul, Mahendargarh District, Haryana.

(b). direct/order closure of mining activities without prior Environmental Clearance under EIA Notification, 2006.

(c). impose exemplary costs on all respondents for causing irreparable loss to the environment and ecology;

(d). direct/order closure of mining activities without obtaining permission under Forest Conservation Act, 1980

(e). direct/order respondent no.9 to pay the royalty for illegally mineral extracted, in accordance with law.

(f). direct/order respondent no. 9 to pay the cost of the minerals extracted illegally, in accordance with law.

(g). direct/order the respondents to restore the damage done to the environment, in view of Section 15 of the NGT Act, 2010

(h). direct/order complete and comprehensive plan for restoration, reforestation and reclamation of the entire area, as well as execution of such approved plan at the cost of the respondents.

(i). direct the authorities to proceed in accordance with law for violation of various environmental laws by the respondents.

(j). direct closure of all such mines operating illegally in the state of Haryana

(k). pass any other order(s)/directions(s) as this Hon'ble Tribunal deems fit and proper, in the facts and circumstances of the present application."

Brief Facts

3. The Department of Mines, State of Haryana had granted lease under the Mineral Concession Rules, 1960 to respondent no. 9 on 20.07.1999 in village Mukandpura, District Mahendargarh, Haryana, for mining of quartz in the land bearing khasra no. 211/3/2, measuring 3.2275

hectares, for a period of 20 years. The said leased land is adjacent to an area bearing no. 212/2 which was declared as reserved forest by the Forest Department of Government of Haryana, vide Notification dated 11.06.1998.

4. The applicant has pleaded that the afore mentioned mines is verily believed by him that it has been operating illegally for thirteen years without the requisite consent to establish under Section 25 and 26 of the Water (Prevention and Control of Pollution) Act, 1974 and Section 21 of the Air (Prevention and Control of Pollution) Act, 1981. As per the knowledge of the applicant, respondent no.5 had not been granted any consent to establish or operate the said mining activity. Neither the respondent has obtained any consent under the Water Act or the Air Act or any permission from the Central Ground Water Authority.

5. Further, it is submitted that respondent no. 9 had started mining in the year 1999. It is alleged that subsequently, the respondent had over-exploited the land resulting in extension of the mining area without any sanction or permission from other respondents. There had been relegation of statutory duty by the concerned official respondents which had impact on the ecology and environment of the region. The officials of the departments, particularly that of Mines, Forest etc. have miserably failed in their statutory duties by allowing respondent no.9 to continue the activity causing irreparable damage and

destruction of the forest, wildlife and adjoining fragile Aravali.

6. The applicant has submitted through GIS remote sensing that the reserved forest area has been encroached and there is rampant illegal mining on the said land. Further, the applicant has submitted that transportation of extracted minerals is being done in an unscientific manner by respondent no.9. The trucks are carrying minerals in an unusually over-loaded manner and are not covered on the top, hence, causing air pollution. There is no provision of water sprinklers in the mining area and ,therefore, harmful dust particles are carried around the forest and villages.

7. The commercial activities in the nature of mining, falls under 'Red category' and therefore, utmost precaution needs to be taken for carrying on activities of such nature. The other respondents i.e. 5 & 7 have allowed the illegal mining to be carried on without obtaining prior EC, as required under EIA Notification, 2006.

8. The applicant has, therefore, submitted that in mining activities, principle of accountability and restoration of the mining area is to be applied. Illegal mining not only threatens the ecology but also poses a severe threat to national security as respondent no. 9, in connivance with other respondents is procuring explosive material from unwarranted sources which are best known to them.

9. The Department of Forest, and the Divisional Forest Officer, Narnaul, District Mahendargarh respondent no. 3&7 respectively have filed a joint reply to the instant application. It has been submitted by the Department of Forest that the mining lease is granted by the Department of Mines and Geology, Government of Haryana. The Forest Department is not involved in this process. Further, it is stated that the joint inspection of the leased area was conducted by the officials of Mining Department, Forest Department and State Pollution Control Board, Haryana. On inspection it was observed that no mining has been done on the date of inspection and on enquiry from the local people, it was revealed that no such incidents took place. Further, it is submitted by respondent Forest Department that demarcation of khasra no. 212/2 and 211/3/2 was done on 28.06.2015. As per the report, there was no mining activity undertaken nor any fresh mining had been observed on that day. Even the experts who gave the said report to the applicant, had categorically stated that the data has limited accuracy and result has to be related with ground survey and the establishments are tentative and subject to verification on the ground. It is also submitted that no mining was reported to have taken place at the time of inspection on 28.06.2015. The Department has denied that mining had been allowed in the reserved forest to respondent no.9 by the competent

authorities. It is also submitted that at present no mining is taking place in the reserved forest of Mukandpura.

10. All the respondents, relating to the Department of Mines (respondent no. 4, 6 &8) in the present application, have filed a joint reply. It has been submitted in the reply that the area was demarcated at the time of grant of lease and in order to re-verify the facts, the lease granted in favour of respondent no. 9 was re-demarcated on 28.06.2015, in compliance with the order dated 19.06.2015 of this Tribunal. As per the fresh demarcation, no encroachment/ mining was found to have been undertaken by respondent no. 9 in the adjoining forest land. The boundary pillars of the leased area are in place and in view thereof, that at few point/rocky land are such where separate pillars could not have been erected, preventive boundary marks have been put at such points. The answering respondent is also said to have taken GPS reading of each boundary pillars. Furthermore, respondent no.9, in consultation with the Forest Department, has also put barbed wires on the side of the leased area which adjoins the reserved forest. The consent to operate under Air Act, 1981 for the year 2015-2016 was granted to respondent no. 9 by the Regional Officer, Haryana State Pollution Control Board vide its letter dated 05.03.2005.

11. Respondents no. 4,6 & 8, Mining Department have submitted that the allegation of excessive mining and loss

of revenue to the State are based on surmises with ulterior motives and are denied as being wrong. Mining Department has further submitted that the video graphic evidence i.e. the CD in question does not pertain to khasra no. 212/2. Authenticity of the CD is doubtful and the same is objected.

12. Haryana State Pollution Control Board, respondent no. 5 has filed its reply to the application and submitted that the present application is merely an abuse of process of law against the answering respondent as there is no lapse on their part in ensuring compliance of provisions of environmental law, as alleged by the applicant. Further, it is submitted by the Board that so far as mining in forest area is concerned, the same falls under the domain of Forest Department and mining in excess over the lease area relates to Mining Department. The Board has submitted that respondent no.9 has obtained CTO under the Air Act of 1981 from it vide letter dated 05.03.2015 for extraction of minor minerals from its leased area, bearing khasra no. 211/3/2 at village Mukandpura.

13. The respondent Board has also submitted that as regards operation of lease without requisite consent to establish is concerned, the consent to operate in the year 2014-15 was refused to the unit under the Air Act, 1981. But the unit preferred an appeal against the refusal of CTO of Air Act, before the Appellate Authority. The said authority decided

the appeal in favour of respondent no.9 and also that the CTO is deemed to have been granted. For the year, 2015-16, the consent under the Air Act, 1981 was granted by Haryana State Pollution Control Board. The unit has tankers fitted with water sprinklers for suppression of dust on haulage road and open area of the lease. Further, it is submitted that as per the analysis report dated 05.01.2015; the parameters were found within limits.

14. Respondent no.9 has filed his counter to the application and submitted that he has a valid lease agreement for excavation of major minerals which was granted to him for a period of 20 years w.e.f 20.07.1999, over an area of 3.7275 hectares. Further, it is submitted that demarcation on the spot was undertaken on 13.08.1999 and it has been carried out on routine basis ever since. One such report of demarcation was also carried out on 17.12.2008. It is also submitted that respondent is carrying on his mining activity within the area of khasra no. 211/3/2. The respondent has submitted that there has been no dispute regarding demarcation between khasra no. 211/3/2 and khasra no. 212/2 and the answering respondent has not encroached upon the neighboring areas. It is also submitted that during the pendency of the present application, officials from three State Departments visited the spot and the respondent believes that the boundaries between khasra no. 211/3/2 and 212/2 has

been found to have been strictly maintained. Respondent no. 9 has also submitted that there has been no mining activity carried out by him outside the strict confines of khasra no. 211/3/2 for which he has the authority of law and a valid prevailing mining lease. In so far as the illegal activity being carried out in the neighboring areas such as khasra no. 212/2 is concerned, the answering respondent has no relation with it.

15. The private respondent has further submitted that he had applied for grant of mining of minor minerals and the same had been granted by the Mining Department of Haryana on the principle of 'one area one lessee', as per Rule 10 of the Haryana Mineral Mining Rules, 2010,which is to run co-terminus with the principle of Major Minerals (i.e. up to 18.07.2019).

16. The respondent has further submitted that he had sought consent of Haryana Pollution Control Board for carrying out mining operations. Prior to the amendment of October, 2014 in MoEF Notification dated 12.09.2006; there was no requirement of obtaining EC for mining of major minerals in areas of less than 5 hectares. Subsequently, there was an amendment in October, 2014 under which the answering respondent was required to obtain EC with respect to mining of major minerals. He applied for the same and was granted on 05.03.2015. However, EC with regard to Mining of minor minerals filed by the respondent

on 18.12.2014 is still pending before the competent authority. However, the said authority has, in principle approved the proposed mining of minor minerals to be undertaken by the respondent, as it is clear from the minutes of meeting dated 03.03.2015.

17. It has been submitted on behalf of respondent no.9 that although he is fully entitled to carryout mining operation in respect to major minerals, he had decided to suspend all mining operations in March, 2015 and shall recommence them only on getting the EC. Therefore, it is clear that the answering respondent has never attempted to violate any legal provision. It has further been stated that there has been no encroachment by the respondent in the reserved forest or to any other area, as alleged by the applicant. The satellite image attached to the application, merely shows the area which has been mined, but cannot be evidence of the fact that beyond the legal and valid areas of 3.7275 hectares falling in khasra no. 211/3/2, mining activities has been carried out by the respondent.

It has also been submitted that the answering respondent is carrying out mining operations strictly in accordance with law and is paying royalty every month and regularly submitting a production report to the Mining Department. No irregularity has been found in payment of royalty. Furthermore, there has been no excessive use of explosives in extraction of minerals and the answering

respondent had been granted a valid permission by the Directorate General of Mines Safety, Ministry of Labour and Employment, Government of India, vide letter dated 10.05.2013.

18. Learned counsel for the applicant has argued that respondent no.9 had started mining in the year 1999 and since then he has been continuously over exploiting the area and encroaching upon the reserved forest land bearing khasra no. 212/2. According to the learned counsel for the applicant, the reserved forest land has been totally encroached and there has been rampant illegal mining in those areas. It was contended that respondent no. 7& 8 were asked by the Tribunal to carry out a field inspection. In the inspection report, it was falsely stated that the illegal mining is in an old mining area and was carried out much before the lease mine owner was granted the lease. It is submitted that it is not an old mining area and rampant illegal mining is being carried out by respondent no.9.

19. It has also been contended that respondent no. 7, DFO, Mahendargarh had also written a letter on 13.03.2014 and 04.09.2014 to the Deputy Commissioner, Mahendargarh, stating that respondent no.2, Government of Haryana vide Notification dated 18.12.1997 had made it mandatory for a stone crusher to maintain at least one kilometer distance from the recorded forest. It is submitted on behalf of the applicant that mining is even more destructive than stone

crushing and, therefore, such reserved forest must be safeguarded and there should be ban on mining activity in Mukandpura area.

20. It was argued on behalf of the applicant that respondent no.9 is a habitual offender. It is submitted that respondent no. 3&7 had stated that Damage Report has been filed on 11.10.2013 for carrying out illegal mining by respondent no.9 in another adjacent reserved forest area bearing khasra no. 214/2/2/1, covering an area of 88,800 sq. ft. Another Damage Report has been filed against two individuals who are believed to be the Drivers of respondent no.9. Respondent no. 7 has also provided an undated letter written to the SHO, Narnaul to file criminal complaint against respondent no. 9 for illegal mining in the reserved forest. It has also been argued that though the issue pertaining to the illegal mining in the reserved forest bearing khasra no. 214/2/2/1 is subjudice, it clearly shows the failure of respondent authority to stop such a massive illegal mining in the reserved forest and the conduct of respondent no.9 is that of a habitual offender.

21. Such huge illegal mining in the reserved forest is possible only by machinery excavation which is in possession of respondent no.9. He is the only lease mine owner in this area and the one who possesses machineries along with license to use exclusively for mining as mentioned in the permission dated 10.05.2013, issued by the Directorate of

Mining. The District Officer, Mahendargarh has stated that such large scale illegal mining can only be done by an organized mining operation and not by villagers. Therefore, it has been argued that the illegal mining could only have been done by the lease holder (respondent no.9) whose area is next to the reserved forest.

22. The learned counsel for the applicant has argued that there is no demarcation between the lease mined area bearing khasra no. 211/3/2 and adjoining reserved forest (khasra no. 212/2) either by the Mining Department, lease holder with regard to the mining lease area or by the concerned Forest Department. It is the case of the applicant that now it is an admitted position that no such demarcation was carried out and it was only after the order of the Tribunal dated 19.06.2015, wherein it was directed to inspect the leased mine area, so as to check whether demarcation of the boundary pillars and GPS reading exists, that it was done subsequently. In pursuant to the said order, fresh demarcation was carried out by respondent no.7, the District Forest Officer and respondent no.8, Mining Officer.

23. It has been submitted by the counsel for the applicant, during the course of argument, that the mining area bearing khasra no. 211/3/2, itself is an area under Aravali plantation project. According to the judgement given by the Hon'ble Supreme Court of India, in case of *M.C Mehta Vs. Union of India, AIR 2004 SCC 4016,* no mining activity may

be carried out in an area over which plantation has been undertaken under Aravali project by utilization of forest funds. It has also been submitted that the conclusion of the latest committee which had prepared the report on 20.09.2016, the inclusion of khasra no. 211/3/2 in the Aravali plantation area is an error. The conclusion of the committee that khasra no. 211/3/2 is not part of the Aravali plantation is incorrect on law and facts. Further, it is submitted that this reason is enough to quash the mining lease, restore the damaged area in the interest of environmental justice. The committee constituted on 06.07.2016 in an ongoing case before the Tribunal is a ploy to mislead this Tribunal and against the earlier stand taken by the authorities. It is an unprecedented move to influence the proceedings of the Tribunal and hence, liable to be rejected out rightly. According to the counsel for the applicant, khasra no. 211/3/2 was earlier recorded under Aravali plantation for identification of the area under the Aravali plantation programme. Therefore, the committee constituted by respondent no.4, Member Secretary, Department of Forest, Government of Haryana on 06.07.2017 to reassertin the facts as improper and illegal, as it now contradicts the earlier stand taken by them.

24. It has been the case of the applicant that mining was carried out without obtaining environmental clearance under EIA Notification, 2006. The Government of India

vide Notification dated 05.02.2015 notified quartz as minor mineral. Accordingly to the counsel for the applicant, respondent no.9 was carrying out mining operations till the month of May, 2015. This is a clear case of illegal mining being carried out even for other minor minerals without EC.

25. It has been contended on behalf of the applicant that in this case, mining of minor mineral was being done illegally. The process of quartz mining involves removal of the rock, stone and masonry from the mines, as it is found in veins of mountains or hillocks. It is verily believed that respondent no.9 while engaged in process of extracting quartz has also taken undue advantage of the process of mining and illegally sold the minor minerals i.e. rock, soil, masonry etc. along with quartz, without paying royalty to the Government. It has also been argued on behalf of the applicant that by encroaching the reserved forest, respondent no.9 has excavated the minerals till 2014 without paying any revenue/royalty to the State Government and the same is said to be estimated at Rs. 15 crores, in the last several years. The said quantity of excavation has been estimated on the basis of Motor Vehicles Act 2016, at given point of time for which it has been said that the actual quantity could be ascertained as to how speedily excavation is done in forest area.

26. The counsel for the applicant has also contended that there has been illegal use of explosive. Government of India

under Explosive Act, 1844 restricts the use of explosives without the permission from the authority. Explosive is issued by the Government authorized agency subject to demand raised by the miner, according to his legal requirement. The case of the applicant is that it is clearly evident from the facts stated above that respondent no.9 is extracting excessive minerals from the encroached forest land for which abundant amount of explosives are required. Therefore, it is obvious that respondent no.9 is procuring illegal explosive from the sources best known to him, causing threat to entire nation.

27. It has also been argued that in the instant case, mining was being done without obtaining consent to establish and consent to operate. It is submitted that respondent no.9 has been operating illegally for nearly 13 years without obtaining consent to establish and consent to operate under the Air and Water Act from respondent no.5, Haryana State Pollution Control Board. The first consent to operate under the Air Act, 1981 was deemed to be granted on 23.08.2013 for the year 2012-13. There was no consent taken by respondent no.9 under the Water Act of 1974. It has also been submitted that no permission was taken from the Central Ground Water Authority. Respondent no.9 had been carrying on mining in an unscientific manner. The trucks, tractors etc. which were being used for carrying minerals are over loaded and not covered from

the top. There is no provision of water sprinklers in the mining area. All this is in clear violation of the Air Act, 1981.

28. Lastly, it has been submitted that respondent no. 9 have been carrying on the mining in violation of the conditions of the lease deed. According to condition no. 4, permission from respondent no.7, DFO is required to enter the reserved forest. In the instant case, the reserved forest has not only been entered into but illegal mining has been carried out without clearance of Forest (Conservation) Act, 1980. Similarly condition no.6 requires permission from respondent no. 6, DC to fell the trees. None of the above permissions were taken and hence the terms of lease should be terminated and the conduct of respondent no.9 warrants that they should never be given mining lease in such areas.

29. Therefore, it has been submitted on behalf of the applicant that in view of the above, this Tribunal may allow the prayers made in the Original Application and impose cost on the respondents as well as order for disciplinary proceedings against the erring officials. It is also submitted that heavy cost be imposed for restitution of the damaged area in question.

30. It has been argued by Ld. Additional Advocate General on behalf of the respondent, State of Haryana and its authorities (respondent no. 2 to 8) that it has been

alleged in the O.A that taking the benefit of proximity of Khasra No. 212/2 (forest area) with mining lease area i.e. khasra no. 211/3/2, respondent no.9 is doing mining in said forest area. It has also been alleged that respondent no.9 is doing mining without environmental clearance and consent to operate under Air (Prevention & Control of Pollution) Act, 1981 and Water (Prevention & Control of Pollution) Act, 1974. The case of the applicant was summarized by this Hon'ble Tribunal vide order dated 08.05.2015. The relevant part of the order dated 08.05.2015 is being reproduced below:

"Heard. Perused.

Grievance regarding illegal mining being carried out without obtaining Environmental Clearance and consents under the Air (Prevention and Control of Pollution) Act and the Water (Prevention and Control of Pollution) Act in khasra no. 212/2 in village Mukundpura, District Mahendargarh, Tehsil Narnaul, Haryana by respondent no.9 has been made in the present application. It is submitted that the respondent no.9, holds mining lease in respect of adjoining khasra no. 211/3/2 and taking advantage of this proximity of the leased portion, illegal mining is being done in khasra no. 212/2."….

31. Further, it has been submitted by the respondents that all the allegations made in the O.A are false, incorrect and hence denied. The applicant has failed to prove his allegations. In compliance of order dated 19.06.2015 passed in M.A No. 634/2015 in present O.A, the khasra no.

211/3/2 as well as Khasra No. 212/2 of village Mukandpura was visited to carry out the investigation, as directed in said order. The investigation report dated 04.07.2015 along with demarcation report dated 28.06.2015 has already been placed at page no. 24 to 31 in M.A No. 634/2015. It is revealed from said investigation report that during the inspection it was found that no mining excavation was being carried out in both the khasra no.s 212/2 and 211/3/2, contrary to the allegations made in M.A No. 634/2015. The said investigation report further reveals that it was decided that to avoid any chance of either the present concession agreement holder or any other person carrying out mining activity in khasra no. 212/2 and to take the benefit of its proximity, being adjoining to khasra no. 211/3/2, the mining department shall permanently put barbed wire between two khasra numbers. so that possibility of undertaking any mining activity will be ruled out permanently. It is noteworthy that respondent no.9 in consultation with the forest official had put barbed wire on the site of leased area adjoining the reserved forest i.e. khasra no. 212/2. The said fact has also been mentioned in Para 3 of reply of respondent no. 4, 6 & 8 which has not been disputed by the applicant in his rejoinder. As such, after making said arrangement, the apprehension of the applicant no more subsists and present O.A is liable to be dismissed.

32. It has also been submitted by the counsel for respondents that so far as Environment Clearance is concerned, it was required to be obtained by respondent no.9 only after amendment on October, 2014 in EIA Notification, 2006. After the said amendment, respondent applied for Environment Clearance and the same was granted by SEIAA on 23.12.2016. As far as consent to operate under Air Act, 1981 and Water Act, 1974 is concerned, CTO under Air Act was granted by Appellate authority of Haryana Pollution Control Board vide order dated 21.11.2014. However, in regard to CTO under Water Act, vide same order dated 21.11.2014, the Appellate authority of Haryana State Pollution Control Board held that CTO is not required under the Water Act. At present, respondent no.9 has obtained consent to operate under both the said Acts.

33. It has been submitted by the counsel for respondent no. 2 to 8 that in view of the submission made herein above, nothing survives in the Original Application and the same was liable to be dismissed much earlier. However, the applicant took a new stand by way of rejoinder alleging that mining lease itself is in a forest area, being part of Aravali plantation. It is further submitted that this new stand by way of rejoinder is not permissible under law. However, a committee was constituted under the Chairmanship of Deputy Commissioner, District Mahendargarh to clarify the status of khasra no. 211/3/2. The said committee came to

the conclusion that khasra no. 211/3/2 is a private land and only common land would be part of Aravali plantation. Further, khasra no. 211/3/2 was actually divided in two parts in the year 1966 i.e. khsra no. 211/3/1 as 'aam rasta', khasra no. 211/3/2 as the land belonging to Shri. Malaram and others, as a private land. Thus, khasra no. 211/3/2 is not a part of Aravali plantation. Therefore, it has been prayed by the Ld. Additional Advocate General, appearing on behalf of the State of Haryana and its authorities that Original Application is liable to be dismissed.

34. The counsel for respondent no. 9 has submitted that he had been allotted a valid lease for mining w.e.f 20.07.1999 in khasra no. 211/3/2 in village Mukandpura, District Mahendargarh. After following the Principle of 'one area one lessee', respondent no.9 has been granted mining lease for Associated Mining Minerals Road Metal and Masonry Stone.

35. At the outset, before going to the merits of the case, respondent no.9 has raised preliminary objections with regard to maintainability of this application. It has been submitted on behalf of the respondent that the applicant has instituted this litigation on behalf of his business rival namely; Rajesh Yadav. The entire litigation has been filed without any evidence against respondent no.9, solely with a view to harass him and without there being any public

interest whatsoever. The applicant has filed this application to disrupt the legal activity undertaken by respondent no.9 and leveled completely unfounded and frivolous allegation against him which are bereft of any valid basis.

36. The respondent has submitted with regard to the allegation of the applicant that he is carrying on illegal mining in khasra no. 212/2 on the basis that there is lack of proper demarcation between the lease area (khasra no. 211/3/2) and the neighboring forest area (khasra no. 212/2).

37. The leased area has been properly demarcated since the very beginning and this has been proved by joint inspection carried out by the officials of the respondent under the orders of the Tribunal. In both of these inspection reports, it has been categorically noted that no mining activity is going on and no fresh mining was found to have been undertaken in khasra no. 212/2. Pillars have been erected with GPS coordinates for marking of boundary areas (khasra no. 211/3/2) in terms of the Haryana Minor Mineral Concession, Stocking. Transportation of Minerals and Prevention of Illegal Mining Rules, 2012. Moreover, there is no evidence whatsoever to show that the said illegal mining is being carried out at the behest of respondent no.9. In fact, respondent no. 9 has been reportedly complaining to the official respondent about such illegal

mining in the neighboring forest areas, even prior to the filing of the present O.A.

38. It has been submitted on behalf of respondent no. 9, in regard to environmental clearance that environmental clearance was made mandatory only upon the amendment in October 2014. Respondent no. 9 had applied on 10.11.2014 and was granted E.C by the State Environment Impact Assessment Authority, Haryana on 23.12.2016. Hence, respondent no. 9 has been granted a valid E.C. During the entire period when the Environment Clearance remained pending, respondent no.9, had dutifully suspended all mining activities, regardless of the filing of the present O.A before the Tribunal. This itself shows a bonafide conduct of respondent no.9 and his respect for the environmental laws.

39. With regard to consent to operate under the Air and Water Act, it has been submitted by the learned counsel for respondent no.9 that it was initially declined by the State Pollution Control Board. But on filing of an Appeal, the Appellate Authority, vide order dated 21.11.2014, granted consent to operate under the Air Act. By the order passed on the same date i.e. 21.11.2014, the Appellate authority held that no consent to operate is required under the Water Act. Now, respondent no. 9 has been granted consent to operate under the Air Act as well as the Water Act from 18.2.2017 to 30.9.2018.

40. Learned counsel has further submitted with regard to deep hole drilling and blasting that respondentno.9 had been granted valid permission for the same, by Directorate General of Mines, Safety, Ministry of Labour and Employment, Government of India, vide letter dated 10.05.2013.

41. It is argued on behalf of respondent no.9 that no reference was made to any other allegation in the O.A, apart from those mentioned above, the applicant subsequently, with the sole object to harass respondent no.9, leveled further allegation with a wholly malafide intent. However, the counsel for respondent no.9 had proposed to respond to all other allegations also.

42. In respect of the submission made on behalf of the applicant that there was Damage report dated 11.10.2013 alleging that illegal mining were being carried out in khasra no. 214/2/2/1, it has been submitted on behalf of respondent no.9 that it is incorrect and rather a version of the applicant. The summoning of order of the Trial Court in respect of the above damage report no. 41660/417 dated 11.10.2013, has been set aside in the Criminal Revision no. by order dated 13.10.2016 passed by Additional Session Judge, Faridabad. Therefore, there survives no such allegation against respondent no.9.

43. The learned counsel for respondent no.9 has submitted with regard to the allegation of the applicant that lease area

(khasra no. 211/3/2) is itself part of Aravali project that the entire basis of this assertion is that khasra no. 211/3/2 of village Mukandpura is mentioned in the letter dated 05.04.2007. However, it is clear that khasra no. 211/3/2 does not fall within the Aravali plantation area for various reasons that Khasra no. 211/3/2 was bifurcated into khasra no. 211/3/1 and 211/3/2, in the year 1966. While khasra no. 211/3/2 is a privately owned lease area, 211/3/1 is a common rasta. According to the meeting dated 12.07.2006 of the committee presided over by the Chief Secretary, only common lands were to be included in the Aravali plantation area-no land under private ownership could form a part of Aravali plantation area. Khasra No. 211/3/2 is admittedly private owned and was thus erroneously mentioned as Aravali plantation area. In order to allay any confusion, a joint committee of official respondents from different departments was constituted which had submitted its report on 20.09.2016. This report is further reiterated and confirmed by a responsible officer of the Forest Department vide his affidavit dated 06.01.02017. Hence, there remains no doubt that lease area (khasra no. 211/3/2) is not part of Aravali plantation area.

44. The affidavit submitted before the Hon'ble Supreme Court in the case of *M. C Mehta (Supra)* only enlist the plantation area in District Gurgaon and Faridabad and does not

mention anything about District Mahendargarh to which the present controversy pertains. The lease area (khasra no. 211/3/2) is recorded in the revenue record as gair mumkin pahar and is not part of any forest or plantation area.

45. In similar circumstances, regarding a mining lease area alleged to be part of Aravali plantation area in the same district of Mahendargarh, this Tribunal in Judgement dated 25.04.2016 (Appeal No. 108/2015 para 10-11), held that the mining area was not part of the Aravali project, by relying upon the order dated 16.02.2002 reported in (2008) 16 SCC 401, categorically banning mining activities only in areas for which Notification under Section 4&5, PLPA 1900 and lands which were recorded as forest. It is undisputed that mining lease area has not been notified under Section 4&5 of PL{PA 1900 (pg 490 of the O.A) and further it is recorded as gair mumkin pahar and not forest in the revenue records.

46. Therefore, in view of the above, it has been submitted by the learned counsel appearing for respondent no. 9 that it is clear that the mining lease area i.e. khasra no. 211/3/2 is not part of the Aravali project, nor is there a prohibition on conducting mining activity in the said area, since it is not notified under Section 4&5 of PLPA 1900, nor is it recorded as forest in the revenue records.

47. It has been submitted by the counsel for respondent no. 9 that much stress has been laid by the applicant on satellite imageries and revenue records and ground reports have been challenged by the applicant by relying heavily on satellite images. It has been held by Hon'ble Supreme Court of India, in the case of Re: Construction of park at NOIDA near Okhla bird sanctuary, (2011) 1 SCC 744 (para 24) that satellite imagery and Google maps are not conclusive evidence of the ground position.

In view of the above submissions made on behalf of respondent no. 9, the learned counsel has prayed for dismissing the O.A, with exemplary cost.

48. On having given our thoughtful consideration to the contentions raised by the respective parties and on careful perusal of the material on record, the controversy in this case boils down, to:

(a) whether respondent no. 9 has been doing illegal mining in khasra no. 211/3/2 causing irreparable loss to environment and ecology.

(b) whether respondent no.9 has encroached upon the land bearing khasra no. 212/2 and doing illegal mining.

The whole controversy in this case revolves around the land bearing khasra no. 211/3/2 and 212/2, in village Mukandpura, Sub Division Narnaul, District Mahendargarh, Haryana. Both the lands are adjacent to each other. Certain facts are undisputed in this case as for instance, respondent

no.9 was granted a lease of land bearing khasra no. 211/3/2, measuring 3.7275 hectares, on 20.07.1999 for a period of 20 years in village Mukandpura. The said lease was granted by Department of Mines, State of Haryana under Haryana Mineral Concession Rules, 1960. The demarcation of the land in question was undertaken on 13.08.1999. During the pendency of the present application, officials from respondent Departments visited the spot and found that the boundaries of khasra no. 211/1/2 have been maintained.

49. Environment Clearance was made mandatory only upon the amendment in October, 2014. Respondent no. 9 had applied for Environment Clearance on 10.11.2014 and was granted the same by the State Environment Impact Assessment Authority, Haryana on 13.12.2016. Consent to operate was initially declined by the State Pollution Control Board. However, in appeal the Appellate Authority vide its order dated 21.11.2014 granted consent to operate under the Air (Prevention and Control of Pollution) Act, 1981. It was also held by the Appellate Authority, by the same order, that no consent to operate is required under the Water (Prevention and Control of Pollution) Act, 1974. Subsequently, respondent no. 9 had been granted consent to operate under the Air Act as well as Water Act from 18.2.2017 to 30.09.2018. Following the Principle of 'one area one lessee', respondent no.9 has been granted mining lease for associated minor minerals namely Road Metal and

Masonry Stone under the provision of Haryana Minor Mineral Concession, Stocking, Transportation of Minerals and Prevention of Illegal Mining Rules, 2012 on 18.12.2014 for the period co-terminus with that of major mineral i.e. up to 18.07.2019. The respondent no.9 was also granted permission for Deep Hole Drilling and Blasting by the Directorate General Mines Safety, Ministry of Labour and Employment, Government of India, vide letter dated 10.05.2013.

50. Reverting to the objections raised by the applicant in respect of mining by respondent no. 9 in khasra no. 211/3/2 in village Mukandpura, it is to be noted that the said mining was started by him after a valid lease from respondent State of Haryana w.e.f 20.07.1999 for a period of 20 years under a valid law, namely, Haryana Mineral Concession Rules, 1960. Subsequently on the basis of the principle of "one area one lessee" the mining lease for Associated Mining Minerals Road Metal and Masonry Stone had been granted to respondent no. 9 on 18.12.2014. In so far as Environment Clearance is concerned, the same was not mandatory in the case of present nature prior to the month of October, 2014. It was only on an amendment have been made in October, 2014 that it became necessary to obtain the Environment Clearance. Respondent no. 9 had applied for Environment Clearance on 10.11.2014 and was granted the same by State Environment Impact

Assessment Authority, Haryana on 23.12.2016. Similarly, for compliance of the Air Act and Water Act, respondent no.9 had applied for consent to operate but the same was declined by Haryana State Pollution Control Board. However, the Appellate Authority granted the consent to operate on 21.11.2014 under the Air (Prevention and Control of Pollution) Act, 1981. As of now respondent no.9 has been granted consent to operate under the Air (Prevention and Control of Pollution) Act, 1981 as well as Water (Prevention and Control of Pollution) Act, 1974 from 18.02.2017 to 30.09.2018. Respondent no. 9 has also been granted valid permission for Deep Hole Drilling and Blasting from the competent authority on 10.05.2013.

51. Another objection raised by the applicant in respect of mining in khasra no. 211/3/2 of village Mukandpura which had only been taken by him at a later stage and during the course of argument, is that the leased area is part of Aravali project. On careful perusal of the material on record, we are of the considered view that his objection to the applicant cannot be sustained for various reasons. Khasra no. 211/3/2 which is a valid mining lease area of respondent no. 9 does not fall within the Aravali plantation area for the following reasons:

(i) Khasra no. 211/3/2 was bifurcated into khasra no. 211/3/1 and 211/3/2, in the year 1966. While khasra no.

211/3/2 is a privately owned lease area, 211/3/1 as a common rasta (pg 416, 490 para 1, of the O.A)

(ii). According to the meeting dated 12.07.2006 of the committee presided over by the Chief Secretary, only common lands were to be included in the Aravali plantation area-No land under private ownership could form a part of Aravali plantation area (Annexure A-4 at pg. 126-134, M.A File-Pg. 131-132). Khasra No. 211/3/2 is admittedly privately owned and was thus erroneously mentioned as Aravali plantation area.

(iii). In order to allay any confusion, a joint committee of official respondents from different departments was constituted which had submitted its report on 20.09.2016 (pg. 418-421 of the O.A). This report is further reiterated and confirmed by a responsible officer of the Forest Department vide his affidavit dated 06.01.02017 (pg 485-496 of the O.A). Hence, there remains no doubt that leased area (khasra no. 211/3/2) is not part of Aravali plantation area.

(iv). The affidavit submitted before the Hon'ble Supreme Court in the case of *M. C Mehta (Supra)* only enlist the plantation area in District Gurgaon and Faridabad and does not mention anything about District Mahendargarh to which the present controversy pertains.

(v). The lease area (khasra no. 211/3/2) is recorded in the revenue record as 'gair mumkin pahar' and is not part of any

forest or plantation area (annexure A-5 (colly) at pg 15-140 of the M.A).

(vi). In similar circumstances, regarding a mining lease area alleged to be part of Aravali plantation area in the same district of Mahendargarh, this Tribunal in its Judgement dated 25.04.2016 (Appeal No. 108/2015 para 10-11, annexure E to the written submission) held that the mining area was not part of the Aravali project, by relying upon the order dated 16.02.2002 reported in (2008) 16 SCC 401 (annexure F to the written submission), categorically banning mining activities only in areas for which Notification under Section 4&5, PLPA 1900 and lands which were recorded as forest. It is undisputed that mining lease area has not been notified under Section 4&5 of PL{PA 1900 (pg 490 of the O.A) and further it is recorded as gair mumkin pahar and not forest in the revenue records.

52. Having considered the objections raised by the applicant that respondent no.9 was doing illegal mining at khasra no. 211/3/2 we are of the view that the same cannot be sustained. Therefore, the first question mentioned above, is answered in the negative.

53. Now coming to the second question in respect of illegal mining of respondent no.9 in khasra no. 212/2, it may be noted that the objection raised by the applicant is primarily based on lack of proper demarcation between the leased area i.e. khasra no. 211/3/2 and the adjacent land bearing

khasra no. 212/2. Soon after the grant of lease to respondent o. 9, in the year 1999, demarcation of lease area which was 3.7275 hectares was undertaken on 13.08.1999. Thereafter, another report of demarcation was prepared on 17.12.2008. Even during the pendency of the present application, the official of respondent departments had visited the site and the boundaries of the lease area of respondent no.9 i.e. khasra no. 211/3/2 was found to have been maintained. In compliance of the order dated 19.06.2015, passed by the Tribunal in M.A No. 634/2015, in the present O.A, khasra no. 212/12 of village Mukandpura was visited to carry out the investigation. The investigation report dated 04.07.2015, along with demarcation Report dated 28.06.2015 are on record. From the said investigation report, it is clear that during the visit, no mining excavation was being carried out on the said aforesaid land, contrary to the allegation made by the applicant.

It is further revealed in the report that in order to avoid any chance of the lease holder or any other person carrying on mining activity in khasra no. 212/12 by taking benefit of its proximity, the Mining Department shall permanently put barbed wires between the two lands, so that possibility of undertaking any mining activity would be ruled out forever. It is stated by the counsel for respondent no.9 that in consultation with forest officials, they have put barbed wires

on the site which is adjoining to the forest land (khasra no. 212/2) This has been specifically averred in para 3 of the reply filed by respondent State Authorities which has not been disputed by the applicant in his rejoinder. Therefore after making such arrangement, the apprehension of the applicant does not survive. It has been submitted on behalf of respondent no.9 that in fact he had been complaining repeatedly to the concerned officials about such illegal mining in the neighboring forest area, even prior to the filing of the present O.A. (Annexure R-9/7T (colly) at page 102-105 of O.A.).

There is nothing on record to show that respondent no.9 had done any mining in khasra no. 212/2. Even if mining had been done on the said land, the applicant ought to have placed evidence on record to establish that it was done by respondent no.9. Even the satellite images attached to the application merely shows that the area has been mined but it cannot be an evidence of the fact that beyond the leased area (khasra no. 211/3/2) mining activity was carried on by respondent no. 9.

54. Another allegation levelled by the applicant is that respondent no.9 has carried out illegal mining in khasra no. 214/2/2/1. The basis of this is Damage Report No. 411660/417 dated 11.10.2013. Suffice it to say that the said order of Trial Court in respect of the aforesaid Damage Report has been set aside in Criminal Revision of 19/2016

vide its order dated 13.10.2016, passed by Additional Session Judge, Faridabad. Therefore, the said allegation does not survive.

55. Lastly, much stress has been laid by the counsel for applicant on satellite imagery, whereas the record as well as ground reports have been challenged by him. It has been held by the Hon'ble Supreme Court in the case of *In Re: Construction of park at NOIDA near Okhla Bird Sanctuary, (2011) 1 SCC 744 (para 24)* that satellite imagery Google images is not a conclusive evidence of the ground position. The relevant portion of the said judgment is as under:

> *"24. The point raised by Mr. Bhushan may be valid in certain cases but in the facts of the case his submissions are quite out of context. In support of the applicants' case that there used to be a forest at the project site he relies upon the report of the CCF based on site inspection and the Google image and most heavily on the FS Report based on satellite imagery and analyzed by GSI application. A satellite image may not always reveal the complete story. Let us for a moment come down from the satellite to the earth and see what picture emerges from the government records and how things appear on the ground. In the revenue records, none of the khasras (plots) falling in the project area was ever shown as jungle or forest…"*

56. It would be relevant to mention here the legal position in respect of pleadings of the parties, particularly the one

filed subsequent to the written statement of the defendant. The respondent State of Haryana as well as respondent no.9 have raised objections that the applicant has taken a new stand in his rejoinder, by making allegations which do not find place in the Original Application. It has been argued by the respondents that the new stand taken by the applicant/plaintiff, by way of rejoinder, is not permissible in law.

57. It is a settled principle of law that no pleadings subsequent to the written submissions of the defendant other than by way of defence to a set-off or counter-claim shall be presented, except by leave of the court and upon such terms as the court thinks fit. This has been further interpreted and elaborated by the courts, from time to time.

58. In the case of *Prag Narayan Mook Badhir Vidyalaya Samiti, Aligarh through its Secretary A.N Agarwal and another v. Hokum Singh, (1987 RLR 991),* it has been held that:

"The plaintiff has introduced something new, which he could do so at the time of institution of the suit. This will cause great prejudice to the merit of the case. Reliance has been placed on the decision of this case, where this court has ruled that the pleadings which are required to be made in the plaint must be pleaded in the plaint itself and not in the replication, and pleading in the replications

cannot be pressed into service for filing the gaps which have been left in the plaint."

59. The said Principle of law has been affirmed in the subsequent judgement of *Gurjant Singh v. Krishna Chander, (2002) (2) Civil Lj 467 (Raj).,* wherein it has been held by the Hon'ble High Court of Rajasthan as follows:

> *"The plaintiff cannot be allowed to raise a new plea under the garb of filing a rejoinder affidavit, or take a plea inconsistent to take a plea inconsistent to the pleas taken by him in the petition, nor the rejoinder can be filed as a matter of right even the Court can grant leave only after applying its mind on the pleas taken in plaint and written statement."*

60. However, the counsel for respondent State and its authorities and also the private respondent no. 9 had proceeded to respond to the allegations leveled by the applicant in his rejoinder. Therefore, there is no need to consider this issue any further on merits.

61. In view of the case put up by the respective parties through their pleadings as well as the material placed on record and the aforesaid reasons/ discussion, the inevitable conclusion is that the present Original Application is devoid of merits. We have thoroughly considered the contentions raised by the parties, particularly, the respondent State and its authorities. Respondent no.9 has a valid mining lease granted by State of Haryana and he is carrying on mining activity after following the due procedure and

obtaining requisite clearances/consents under the relevant laws. The private respondent has been granted the Environmental Clearance by SEIAA and consent under both, Water Act of 1974 as well as Air Act of 1981. The applicant has subsequently challenged the Environment Clearance dated 23/12/2016 by way of appeal (08/2017) and the same is pending before the Tribunal. The material on record including inspection/investigation reports submitted by the respondent Government Authorities after inspection of the site and also the report filed in compliance of order of this Tribunal dated 19.06.2015 (in M.A No. 634/2015), leaves no room for doubt that respondent no.9 has not encroached on the adjoining lands. The applicant has failed to establish that respondent no.9 has been carrying on illegal mining on khasra no. 212/2 and khasra no. 214/2/2/1.

62. Therefore, there is no reason for closure of all mining activities of respondent no.9 in village Mukandpura, for want of Environmental Clearance under EIA Notification, 2006 or consent under the Water Act of 1974 or consent under the Air Act of 1981 or for any other reason. He is not carrying on any illegal mining in the adjoining areas or in the forest land. The prayers made by the applicant for causing loss to the environment/ecology or direction for restoring, reforestation and reclamation of the entire area needs to be rejected. So far as prayer no. (j) with regard to

all such mines illegally operating in State of Haryana is concerned, the same is not sustainable as being beyond the scope of the present Original Application and cannot be entertained in absence of the concerned violators not being a party to this application and it would also amount to misjoinder of cause of action which is not permissible in an application under the NGT Act, 2010 and the rules made thereunder.

63. Consequently this Original Application deserves to be rejected and it is accordingly dismissed, with no order as to cost.

64. As the Original Application No. 148/2015 has been decided by the Tribunal today, the M.A No. 634/2015 does not survive for consideration. Accordingly, M.A NO. 634/2015 stands dismissed, with no order as to cost.

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Justice Raghuvendra S. Rathore
(Judicial Member)

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Ranjan Chatterjee
(Expert Member)

New Delhi.
Dated: 30th May, 2017