

BEFORE THE NATIONAL GREEN TRIBUNAL

PRINCIPAL BENCH

NEW DELHI

.....

APPLICATION NO.'s 328/2013, 288/2013, 353/2013,

348/2013, 351/2013,

350/2013, 349/2013 and M.A. No. 767/2014

In the matter of :

1. Lokendra Kumar
Son of Shri Jai Singh
Resident of Village Biharipur
District:Baghpat, Uttar PradeshApplicant

Versus

- 1) State of U.P. through Chief Secretary Government of Uttar Pradesh, Lucknow-226001
- 2) Principal Secretary (Geology & Mining) Government of Uttar Pradesh, Lucknow-226001
- 3) Director, Geology and Mining ,
U.P. Lucknow-226001
- 4) Principal Secretary Environment and Forest
U.P. Lucknow-226001
- 5) The Director/Member/Secretary State Environment Impact Assessment Authority, U.P. Lucknow-226010
- 6) The District Magistrate, Baghpat, Dist. Baghpat, Uttar Pradesh,-250609
- 7) Secretary, Ministry of Environment & Forest, Government of India, New Delhi-110003
- 8) M/s Man Singh brick Field
Village-Nethala,
Tehsil & Dist: BaghpalRespondents

2. Chandrapal Singh
S/o Jagmal Singh
Resident of Village & Post Gharbara
Tehsil- Khair,
District:AligarhApplicant

Versus

- 1) State of U.P. through Chief Secretary Government of Uttar Pradesh, Lucknow-226001
- 2) Principal Secretary (Geology & Mining) Government of Uttar Pradesh, Lucknow-226001
- 3) Director, Geology and Mining ,
U.P. Lucknow-226001
- 4) Principal Secretary Environment and Forest
U.P. Lucknow-226001
- 5) The Director/Member/Secretary State Environment Impact Assessment Authority, U.P. Lucknow-226010
- 6) Secretary of Ministry of Environment & Forest, Government of India, New Delhi-110024
- 7) Uttar Pradesh Env't Nirmata Samitee
87/15, Risal Dar Park,
Lal Kuan, Lucknow,-U.P. 226001
- 8) Harbir Singh
S/o Late Minshi Singh
R/o Village Shapur Badoli
District: Baghpat
- 9) Kailash Chand
S/o Late Ram Singh,
R/o Village Sakoti Janda
District-Meerut
Mohamad Akbar
Sajan Singh
- 10) Krishan Pal Singh
- 11) Rajendra SinghRespondents

3. Mata Brick Field
Shapur Badoli, Tehsil Baraut,
District:Baghpat, U.P.-250609Applicant

Versus

- 1) State of U.P. through Principal Secretary,
(Environment)
Government of Uttar Pradesh,
Lucknow-226001.
- 2) State Environment Impact Assessment Authority,
Through its Chairman,
Directorate of Environment,
Lucknow, U.P. – 226001Respondents

4. Shafiq
S/o Late Shri Mangat,
R/o Village Shajhapur, Tehsil Baraut,

District:Baghpat, U.P.

.....Applicant

Versus

- 1) State of U.P. through Principal Secretary,
(Environment)
Government of Uttar Pradesh,
Lucknow-226001
 - 2) Union of India through Secretary,
Ministry of Environment & Forests,
Government of India,
New Delhi.
 - 3) Principal Secretary (Geology & Mining)
Government of U.P.
Lucknow-226001
 - 4) Director,
Geology & Mining, U.P., सत्यमेव जयते
Lucknow-226001
 - 5) District Magistrate,
Baghpat,
Dist. Baghpat, U.P.-250609
 - 6) Additional District Magistrate,
Baghpat,
Dist. Baghpat, U.P. 250609
 - 7) Sub Division Magistrate,
Tehsil Baraut,
District Baghpat, U.P.-250609
 - 8) M/s Man Singh Brick Field,
Village Nithala
Tehsil & Dist. Baghpat
State of U.P.
-Respondents

5. Harbir

S/o Harikishan,
Village-Saroorpurkalan,
Tehsil-Baghpat,
District: Baghpat, U.P. 250609

.....Applicant

Versus

- 1) State of U.P. through Principal Secretary,
(Environment)
Government of Uttar Pradesh,
Lucknow-226001
- 2) Union of India through Secretary,
Ministry of Environment & Forests,
Government of India,
New Delhi.
- 3) Principal Secretary (Geology & Mining)

Government of U.P.
Lucknow-226001

- 4) Director,
Geology & Mining, U.P.,
Lucknow-226001
- 5) District Magistrate,
Baghpat,
Dist. Baghpat, U.P.-250609
- 6) Additional District Magistrate,
Baghpat,
Dist. Baghpat, U.P. 250609
- 7) Sub Division Magistrate,
Tehsil Baraut,
District Baghpat, U.P.-250609
- 8) M/s Man Singh Brick Field,
Village Nithala
Tehsil & Dist. Baghpat
State of U.P.

.....Respondents

6. Rajkumar Singh
S/o Nam Singh,
Village-Doraoo Chandpur,
Aligarh, U.P. 202001

.....Applicant

Versus

- 1) State of U.P. through Principal Secretary,
(Environment)
Government of Uttar Pradesh,
Lucknow-226001
- 2) Union of India through Secretary,
Ministry of Environment & Forests,
Government of India,
New Delhi.
- 3) Principal Secretary (Geology & Mining)
Government of U.P.
Lucknow-226001
- 4) Director,
Geology & Mining, U.P.,
Lucknow-226001
- 5) District Magistrate,
Baghpat,
Dist. Baghpat, U.P.-250609
- 6) Additional District Magistrate,
Baghpat,
Dist. Baghpat, U.P. 250609
- 7) M/s Man Singh Brick Field,
Village Nithala
Tehsil & Dist. Baghpat
State of U.P.

.....Respondents

7. Bhopal Singh
S/o Late Shri Nanhe,
R/o Village Mohammadpur Khunti,
Tehsil Baraut,
District: Baghpat, U.P. 250609

.....Applicant

Versus

- 1) State of U.P. through Principal Secretary,
(Environment)
Government of Uttar Pradesh,
Lucknow-226001
- 2) Union of India through Secretary,
Ministry of Environment & Forests,
Government of India,
New Delhi.
- 3) Principal Secretary (Geology & Mining)
Government of U.P.
Lucknow-226001
- 4) Director,
Geology & Mining, U.P.,
Lucknow-226001
- 5) District Magistrate,
Baghpat,
Dist. Baghpat, U.P.-250609
- 6) Additional District Magistrate,
Baghpat,
Dist. Baghpat, U.P. 250609
- 7) Sub Division Magistrate,
Tehsil Baraut,
District Baghpat, U.P.-250609
- 8) M/s Man Singh Brick Field,
Village Nithala
Tehsil & Dist. Baghpat
State of U.P.

.....Respondents

Counsel for Applicant:

Mr. Akhilesh Kumar, Advs. (O.A. No. 353/2013), Mr. Anoop Trivedi,
Adv., Ms. Pooja Dhar, Adv, (O.A. No. 328/2013 and O.A. No.
288/2013), Mr. Arvind Kumar Rai, Adv. O.A. No. 328/2013, O.A.

No. 349/2013 and O.A. No. 288/2013), Mr. Rajesh Kumar, Adv. (O.A. No. 348/2013), Mr. Jagdeep Singh, Adv.,(O.A. No. 351/2013)

Counsel for Respondents:

Ms. Savitri Pandey, Adv. for respondent no. 1 to 5 (in O.A. No. 288/2013 , respondent no. 1 to 6(in O.A. No 328/2013), respondent no. 2 & 3(in O.A No. 353/2013), respondent no. 1 & 3 to 7(in O.A. No. 351/2013), respondent no. 1 (in O.A. No. 350/2013), and respondent no 3 to 7 (in O.A. No. 349/2013), Mr. Gaurav Bhatia, Adv. for respondent no. 1 to 3 (in O.A. No. 288/2013) respondent no. 2 & 4(in O.A No. 288/2013, 328/2013), Mr. Pawan Upadhaya, Adv. for respondent no. 5 and respondent no. 6 (in O.A No. 288/2013, 328/2013), Mr. Kaustin Pathak, Adv. for Respondent No. 7 (in O.A. No. 288/2013) , Mr. M.P. Sahay, Adv. for Respondent No. 7 (in O.A No. 348/2013), Ms. Kavyanjali, Adv. and Mr. Kaustubh Pathak,Advs. for respondent no. 8 .(in O.A. no. 288/2013 and O.A. No. 328/2013), Mr. Ashok Kr. Sharma, Adv. for respondent no. 8 (in O.A. No. 328/2013, 288/2013), Mr. Vikas Malhotra, Adv. for respondent no. 8 (in O.A. No. 288/2013) , respondent no. 2 (in O.A. No. 350/2013 & 349/2013, 348/2013) respondent no. 1 to 5(in O.A. No. 353/2013, 288/2013 , 328/2013), Mr. Aman Mishra, Adv for respondent no. 2,3&4 (in O.A No. 328/2013), Mr. Santosh, & Ms. Mohini, Advs. for respondent no.7 (O.A. No. 288/2013), Mr. Manish Tiwari, Adv. for respondent no 1 to 6, Ms. Antaryami Upadhyay, Adv. for respondent no. 1 to 6, Mr. Rajeev, Adv., Mr. Rajesh, Adv. & Ms. Meenakshi, Adv. for respondent no. 6 (in O.A. No. 288/2013, 328/2013)

ORDER/JUDGMENT

PRESENT :

Hon'ble Mr. Justice Dr. P. Jyothimani (Judicial Member)

Hon'ble Dr. G.K. Pandey (Expert Member)

Hon'ble Ranjan Chatterjee (Expert Member)

Dated : 14th January, 2015

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?

JUSTICE DR. P. JYOTHIMANI (JUDICIAL MEMBER):

1. The common issue involved in all these cases pertains to the quarrying of brick earth in the State of U.P. The prayer in all these

cases pertain to quarrying brick earth without obtaining environment clearance and also for a direction against the respondents to comply with the directions of the MoEF dated 15.05.2012 and 24.06.2013 and the order of the Hon'ble Supreme Court dated 27.02.2012 rendered in Deepak Kumar Vs State of Haryana.

2. The brief facts leading to filing of the above cases especially in O.A. No. 328 of 2013 which are similar in nature in respect of other cases also are as follows:

The District Bahgpat in U.P. is comprised of many villages like Biharipur, Bada Gaon, Khekra, Katha, Bandpur, Pali, Baghpat Town, Ahera, Tatri, Sisana, Nirozpur, Santoshpur, Gauripur, Naithla, Ninana, Fazallapur, Biharipur, Lidhwari, Saroorpur Kalan, Kherki, Tyodi, Mavi Kalan, Kherahatana, Jounmana, Dikhana. It is stated that in the aforesaid villages nearly 282 brick kilns are established. They were stated to have been permitted by the District Administration without requiring them to obtain environment clearance. According, to the petitioners the quarrying of brick earth in the brick kiln causes damage to environment and airable land. The excavation of the said minor mineral indiscriminately, affects the underground water recharge. By conduct of the owners in digging deep pits it results in adverse affect on the water resources and hydrology. It also results in the fast drying of water level in the ponds and lakes situated in the villages. The Government of India through the MoEF has issued a notification dated 14.09.2006 providing for prior environment

clearance before such mining and other activities contained therein. This is referred to as “EIA Notification 2006”.

3. It is the case of the applicants that the Hon’ble Allahabad High Court in the Writ Petition No. 9416 and 10035 of 2010 has held that environment clearance is required whether there is a mining permit or lease especially after the EIA notification dated 14.09.2006. According to the applicants, the State Governments in order to circumvent the notification of the Government as well as the order of the Hon’ble High Court has started permitting excavation of the minor mineral in the extent less than 5 hectares. When the matter was taken to the Hon’ble Apex Court in Deepak Kumar Vs State of Haryana, Hon’ble Supreme Court while directing the State Governments to immediately frame rules under Section 15 of the Minor and Mineral and Development Regulation Act, 1957, has directed that till then even if it is less than 5 hectares prior environment clearance is required.

4. It was pursuant to the Judgment of the Hon’ble Apex Court, the MoEF has issued an office memorandum dated 18.05.2012 directing that all mining projects of minor minerals including their renewal, irrespective of the size of the lease would henceforth require prior environment clearance. It was also stated in the said memorandum that mining projects with lease area up to less than 50 hectares including minor minerals with lease area less than 5 hectares would be treated as ‘B’ category as per EIA Notification 2006 and has to be considered by State Level Impact Assessment Authority (SEIAA). It is stated that the Government of U.P. has not

complied with the directions of the Hon'ble High Court of Allahabad which resulted in filing of a contempt petition in contempt petition no. 4555 of 2012 in which the Hon'ble High Court has granted one more opportunity to the State to comply with the order. According to the applicant the State has neither framed any rule as per the direction of the Hon'ble Supreme Court nor prevented digging of brick earth and brought them within the purview of the EIA Notification dated 14.09.2006.

5. As mining of any minor minerals also amounts to mining operation, the mining rules contemplate various safeguards for environmental protection apart from imposing punishment in cases of violation.

6. According to the petitioners, instead of implementing the Judgment of the Hon'ble Supreme Court in its strict sense, the U.P. Government has promulgated U.P. Minor Mineral (concession 35th Amendment) Rule, 2012. As per the said amendment which contains an explanation, digging of brick earth by manual process was sought to be kept outside the purview of mining operation. The said process has also not provided for any environment clearance. In those circumstances, the MoEF has issued another clarification by way of office memorandum dated 24.06.2013 by which it was reiterated that the activities of borrowing/excavation of brick earth and ordinary earth up to an area of 5 hectare may be categorised as B2 category subject to the guidelines in terms of provisions of 7.1 stage of EIA Notification 2006.

7. It is also the case of the applicants that the Directorate of Environment of U.P. in the letter dated 05.07.2013 addressed to the State Government has indicated that excavation or quarrying of brick earth require prior environment clearance. Therefore, the SEIAA which has to grant clearance is obliged to consider the applications from such persons proposed to excavate brick earth only after it specifies that various conditions contemplated under the EIA Notification are fulfilled. This was also appraised to the District Magistrate on 10.10.2013. However, the District Authorities of Baghpat District have ignored all the letters including the Judgments of the Hon'ble Supreme Court. Again, the applicant has complained to the District Magistrate Baghpat on 16.08.2013 about the illegal activities of quarrying brick earth by the brick kiln owners without obtaining environment clearance. The District Magistrate being licensing authority has been accepting the payment of royalty and permitting the owners to excavate earth without environment clearance which is illegal.

8. In O.A. no. 288 of 2013 filed by one Mr. Chandrapal, the Tribunal has restrained the digging /quarrying of brick earth without environment clearance from the Competent Authority. When the U.P. Environment Nirmata Samiti has impleaded itself as a party in the said application, it was informed that the Mines and Minerals Development Rules have been amended by U.P. Government by 35th Amendment, the interim order was modified by the Tribunal making the order of injunction subject to any amendment passed by the State Government to the rules. It is also stated that based on the

notification of the Government of India dated 24.06.2013, the Government of Haryana has issued notices to brick kiln owners who are excavating brick earth without environment clearance.

9. The applications have been filed on the ground that by indiscriminate quarrying of brick earth by brick kilns, people living in the area are affected and even if the area of mining operation is less than 5 hectares the quarrying can be done only after obtaining permission from SEIAA. It is also the case of the applicants that the adverse affect of such indiscriminate mining results in prevention of free flow of water during rainy season, stagnation of water by creation of a large number of pits dug by the brick kiln owners thereby resulting in water scarcity in other areas and that unless and until the State Government frame proper scheme as per the direction of the Hon'ble Supreme Court, excavation of any soil whether manual or otherwise to any extent is to be prohibited unless the same is permitted by the Competent Authority.

10. That was also the pleading by the applicant in O.A. No. 288 of 2013 who has however added that taking note of the order passed by the Hon'ble Supreme Court, the Hon'ble High Court of Punjab and Haryana at Chandigarh in the order dated 17.08.2012 has issued specific directions to stop the operation of quarries up to 5 hectares and that in a similar matter in the case of NGT Bar Association Vs MoEF and Ors, in O.A. No. 171 of 2013 the Tribunal has issued an interim order on 05.08.2013. That is also the case of the applicants in O.A. No. 349 of 2013, O.A. No. 350 of 2013, 351 of 2013 and 348 of 2013.

11. However, one Mata Brick Field, situated in Baghpat U.P. has filed O.A. No. 353 of 2013. The applicant who is the proprietor stated to have been engaged in the business of manufacturing bricks has prayed for issuance of appropriate directions to the respondents including the SEIAA, Lucknow U.P. to dispose of its application for grant of environmental clearance as per the memorandum of MoEF dated 24.06.2013 and also for a direction against them to grant environment clearance. According to the applicant, the applicant's firm was registered under the Trade Tax Department and after the Judgment of Hon'ble Supreme Court in Deepak Kumar case, the State of U.P. by virtue of amendment has taken out the digging of brick earth from and outside the purview of the term "mining", even though such activity would attract payment of royalty. It is the case of the applicant that on the representation of the brick kiln owners, the MoEF has constituted an expert committee for issuing recommendations in the matter of grant for environment clearance to brick kiln owners. It was based on the report of the expert committee, the MoEF has issued guidelines in the office memorandum dated 24.06.2013 by which the excavation of brick earth was categorised as B2 category and accordingly, the SEIAA, in the States are empowered to grant environment clearance after fulfilling of various conditions contemplated therein. According to the applicant, it fulfils the various conditions mentioned and in spite of the same the applicant is not permitted to commence its operation of excavation of brick earth and payment of royalty. The applicant has applied to SEIAA on 08.08.2013 asking

for environment clearance. However, there was no action taken based on the said application which resulted in a further representation made by the said applicant on 04.11.2013. Since his application was not considered he has filed the above application for a direction to the respondents to consider its application and pass appropriate orders in accordance with law.

12. The respondent no. 8 in O.A. No. 328 of 2013, M/s Mansingh Brick Filed situated in District Bahgpal, Village Nathala in the State of U.P. which was impleaded in the order dated 11.12.2013, in the reply affidavit has stated that while the applications are not maintainable, the EIA Notification dated 14.09.2006 is not applicable to brick kilns. According to the said respondent, the EIA Notification dated 14.09.2006 in paragraph 2 and 7 has not included manufacturing of brick kiln in its Schedule and therefore, for the purpose of excavation of earth soil for manufacturing brick kiln, environment clearance is not required and therefore the application is liable to be dismissed. It is also the case of respondent no. 8 that even the office memorandum dated 24.06.2013 has excluded brick operation within the purview of the notification. It is also stated that the applicants have not mentioned as to what violation has been committed by the brick kiln owners in making excavation. It is further stated that the applicant in O.A. No. 328 of 2013 through his co-brothers himself is running three brick kilns in large scale and it is only with an intention of interfering with small farmers having small extent of lands from excavating earth to a small extent for manufacturing

bricks in a small quantity the applications are filed and therefore the applications are liable to be dismissed on the ground of melafide.

13. It is the case of the respondent no. 8, that no environment clearance is required for the purpose of excavation of earth for brick kiln. The said respondent has also raised the question of limitation and stated that the application under Section 14 has been filed beyond the period of limitation. In the absence of any specific violation by any of the owners of brick kiln, the application is devoid of any merits. It is also the case of the said respondent that the brick kiln do not cause any damage to the environment or to airable land. On the other hand the manufacturers of brick maintain environmental balance in clearing the needs of people. It is stated that the brick kiln manufacture bricks which are necessary materials required for shelter. It is also stated that the brick kiln are placed in the areas which are not fertile and by removing the first layer of the earth to be used for the purpose of manufacturing bricks the farmers earn their livelihood and the crops are not spoiled, as non fertile area of the land alone are removed and in any event digging does not take beyond six feet and therefore, the underground water is not affected. The brick manufacturing does not affect environment.

14. It is also stated that the Government of U.P. has already framed rules covering the field and the removal of earth for brick kiln is done strictly under the supervision of the Governmental Authorities based on the guidelines issued by the U.P. Government. It is also

stated that the Judgment of the Hon'ble Supreme Court also does not deal with manufacturing process of brick kiln.

15. The Government of U.P. both the Directorate of Environment and Ors who are respondent nos. 1 to 5 in O.A. No. 328 of 2013 and O.A. No. 288 of 2013 have also filed their reply. As per the said reply it is stated that under the EIA Notification 2006, it is mandatory to obtain Environmental Clearance for establishment of the projects listed in the Schedule and that mining of minerals is listed in Item No. 1. It is stated that in case of mining lease of area more than 50 ha, Environmental Clearance should be obtained from MoEF while in respect of less than or upto 50 ha, the clearance is obtained from the State Level Environment Impact Assessment Authority ("SEIAA").

16. It is further stated that while it is true that the Hon'ble Supreme Court of India in Deepak Kumar Vs. State of Haryana in the Judgment dated 27th February, 2012 has directed the State Governments to take steps to frame necessary rules under section 15 of the Mines & Minerals (Development & Regulation) Act, 1957 and that in the meantime the leases of minor minerals including their renewal for an area less than 5 ha be granted by States/ Union Territories only after getting clearance from the MoEF/SEIAA. It is their case that in accordance with the directions of the Hon'ble Supreme Court of India, the Department of Geology and Mining has taken steps to frame rules and till that time leases of minor minerals including their renewal for an area less than 5 hectares be granted only after obtaining Environment Clearance. The

Government of India in the letter dated 18th May, 2012 has also reiterated the direction of the Hon'ble Supreme Court of India to be followed by the States namely that minor minerals including their renewals in respect of their leases, irrespective of their size should be granted only after the Environment Clearance.

17. It is the case of the Mining Department of Uttar Pradesh that the Department has issued a Notification called Uttar Pradesh Minor Mineral (35th Revision) Rules, 2012 by virtue of its powers under Section 15 of MMDR Act, 1957. Under the said amendment, the rules were amended to provide that the manual excavation of ordinary soil/brick earth up to 02 m shall not be included as a mining activity.

18. According to the said Respondent, the State Level Expert Appraisal Committee ("SEAC") has discussed in the meeting held on 5th November, 2012 about the brick earth mining. It was decided that in respect of mining of minor minerals and the lease upto 05 ha should be treated as "B2" category of projects which does not require scoping, public hearing and preparation of Environment Impact Assessment (EIA) Report. In respect of the mining of brick earth regarding the lease up to 05 hectares it was decide that the Form-1 and pre-feasibility report as required under EIA Notification, 2006 must be produced apart from the production of Survey of India Topo sheet and Google sheet (indicating Brick Kiln site and Brick Earth excavation site), copy of registered/notarized agreement between the owners of the plots proposed for excavating brick kiln along with the Khasara Nos. as per the revenue map, 500 m radius

map from the boundary of excavation/ mining plots duly certified by local Revenue Official/ Authority along with designation etc. and the Environment Management Plan including Mine Closure Rehabilitation etc. The Committee has also discussed about the soil excavation for the purpose of brick kilns up to 02 m which does not require Environment Clearance as per the 35th amendment of the Rules of Uttar Pradesh but stated that in those cases the applicant has to make information to the State. It is also stated that the Committee has deliberated that in cases where the extent of excavation is below 02 m or using mechanised methods, the Environment Clearance should be obtained. The SEIAA has accepted the decision of the SEAC dated 26th December, 2012. The State Authority has also found that none of the 184 Applicants have submitted their clarification in compliance to SEIAA decision except one M/s R.J. Ent Udyog, Aligarh who have stated that they would use mechanized ways for excavation in respect of which prior Environment Clearance was granted with conditions.

19. That apart it is stated that four more representations have been received by SEIAA namely from Mr. Maneesh Kumar Garg, Mr. Sandeep Kumar, Mr. Sagir Ali and Mr. Raj Narayan Yadav. Those representations were considered by SEAC in its meeting held on 5th October, 2013 and after finding that the information regarding the excavation which are likely to result into a cluster situation has not been provided in the applications, apart from the information regarding of 500 m radius map and the human settlement, road, forest etc., decided to direct them to give complete information. In

so far as it relates to the direction of the Hon'ble Supreme Court of India to the States to make proper amendment, it is stated that the steps are being taken and in the meantime leases of minor minerals including their renewal for an area less than 5 ha are granted only after obtaining Environment Clearance. However, it is stated that mining permits for brick earth excavation are issued by the Mining Department/ District Administration so as to ensure that no excavation is undertaken without prior Environmental Clearance. It is reiterated that by the 35th Amendment of the rules by UP, the manual excavation of ordinary soil/ brick earth up to 02 m are not included under the Mining activity, and the said amendment is continued to be operative by virtue of the modification of the Order of the National Green Tribunal dated 8th October, 2013.

20. Mr. Arvind Kumar Rai and Mr. Akhilesh Kumar apart from the other learned counsel appearing for the applicants would submit that as per the EIA Notification issued by MoEF dated 14.09.2006 the excavation of land for brick kiln should fall under 'B' Category and by virtue of the office memorandum issued by the MoEF dated 24.06.2013 which according to them is to be read along with the EIA Notification 2006, mining of brick earth having lease area less than 5 hectares should be categorised as B2 category subject to various guidelines in terms of the EIA Notification especially under class 7.1 Stage (1)/Screening. According to them the guidelines issued in the year 2013 operates throughout the country. It is their contention that as per the Judgment of the Allahabad High Court the Environment (Protection Act) being a special Act dealing with

the protection of environment and ecology the MMRD Act is a general law and therefore Environment Protection Act should prevail. They would substantiate that the High Court in categorical term has stated that the Environment Act and Rules framed there under would prevail over the MMRD Act. It is also their submission that land excavation for brick kiln being a Minor Mineral, as per the Judgment of the Hon'ble Supreme Court in Deepak Kumar and Ors Vs State of Haryana and Ors is applicable to the fact of the case and till the State Governments make necessary rules under the Mining Act based on the technical, scientific and environment matters as enshrined under various recommendations of MoEF in March 2010 followed by the rules 2010 framed by the Ministry of Mines, the removal of Mines and Minerals including their excavation even for less than 5 hectares be granted permission only after environment clearance granted by the SEIAA. In the present case either by the 35th Amendment or by 37th Amendment of UP Government which has been brought out much subsequently it cannot be said that the rules have been framed as per the direction of the Hon'ble Supreme Court and therefore in spite of such 35th or 37th Amendment the Supreme Court Judgment is to be implemented and the amendments are to be ignored until such amendments are made strictly as per the directions of the Hon'ble Apex Court. It is also brought to the notice of this Tribunal by the learned counsel, that by a letter dated 05.07.2013, the Director of Environment U.P. himself has communicated to the Principal Secretary Government of U.P. stating in clear terms that prior Environment Clearance for all

brick earth and soil mining projects has become compulsory according to the memorandum of the MoEF dated 24.06.2013, even though it was mentioned that under the 35th Amendment by the U.P. Government quarrying of ordinary soil by manual work for making bricks up to 2 metres pit will not be included under the mining operations.

21. According to them the so called U.P. Minor Minerals (Concession 35th Amendment) Rules, 2012 as well as in 37th Amendment are not in accordance with the terms of the Judgment of the Hon'ble Supreme Court. It is also their contention that the Haryana SPCB in the letter dated 20.09.2013 has clearly stated that excavation of brick earth up to an area of less than 5 hectares requires EIA Clearance even though the Haryana Government through its Mines and Geology Department has issued a notification on 23.01.2013 has made an amendment to the U.P. amendment that excavation or operation of brick earth or ordinary clay up to 1^{1/2} metres from adjoining ground level should not be treated as mining operation. While dealing with the plea raised on behalf of Government to permit to amend the counter affidavit of the U.P., it is their contention that by an amendment, a party should not be allowed to take any inconsistent and diametrically opposite stand and such application is not maintainable under order 6 rule 1 CPC. They also submit that the party cannot be allowed to withdraw the original averment to make a new case especially when there was a clear admission on the earlier occasion. Therefore, according to the learned counsel, in spite of the amendments stated to have been

carried out by U.P. Government they are to be ignored since they are against the Judgment of the Hon'ble Supreme Court and excavation of soil for brick manufacturing is covered under the EIA Notification.

22. *Per Contra* it is the contention of the learned counsel appearing for respondent no. 8 Mr. Ashok Sharma that the respondent no. 8 is a small farmer and as the owner he is the person better qualified to decide as to how much of his land is to be excavated. It is his submission that pursuant to the Supreme Court Judgment when the State Government has made amendment of the mining rules allowing manual excavation upto 2 metres, which is the legislative prerogative of the State Government, it should be presumed that the direction of the Hon'ble Supreme Court has been complied with and therefore the last para of the Judgment of the Supreme Court becomes inoperative and the amendment made by the State Government has taken the field. It is his submission that the validity or otherwise of such amendment is not within the purview of this Tribunal. It is also his submission that in Deepak Kumar Judgment, the Hon'ble Supreme Court was only dealing with the river beds and sand available and not about excavation of soil for brick kiln.

22. According to Mr. Sharma not every digging is mining. Mining is an extraction of natural resources and therefore there is absolutely no cause of action for the applicants to maintain their application especially under the changed circumstances of passing of amendments to the mining rules by the U.P. Government as 35th

and 37th Amendment. He would rely upon the Judgment of the Supreme Court reported in AIR (1959) SC 648, to substantiate his contention that the Courts cannot legislate. According to him, when once the competent legislature has passed amendments thereby making a valid law in accordance with the direction of the Supreme Court, one cannot insist that the Supreme Court Judgment has to be still followed. It is also his contention that when MoEF has passed EIA Notification of 2006, not including brick kiln requiring prior environment clearance, such requirement cannot be subsequently incorporated by way of an office memorandum. Mr. Sharma would rely upon the Judgment of the Supreme court reported in the AIR 1992 SC 1546 and AIR (1977) SC 842, to submit that the direction given in the Deepak Kumar Judgment cannot be treated as legislative in nature, after the State Government has effected by notification amending the mining rules. In so far as it relates to the legislative function, the supremacy lies with the State Legislature and not Court. There is no power on the part of any Court to compel a legislature to pass law or enforce the provision of law in accordance with its direction for which he relied upon the Judgment reported in the AIR (1971) SC 2399. He would also submit basing reliance on the Judgment reported in 2008 (2) SCC 254, that when rules are framed by exercising the legislative functions the presumption always is in favour of the rule unless and until it is set aside by the competent court. He would also submit that the list itself is not bonafide and is intended to cut the small farmers for the benefit of the larger brick owners and

therefore it is an abuse of process of law and hence applications are liable to be dismissed. He would finally submit that the cases are filed merely based on photographs and without any authentic evidence.

23. Ms. Savitri Pandey learned counsel appearing for the State who has filed written submission has submitted that when once 35th amendment as well as 37th amendment are passed by the State Government enforcing its legislative function, which was as per the direction of the Hon'ble Supreme Court in Deepak Kumar Judgment , it is no more open to the Tribunal to issue direction to the parties to follow the Supreme Court Judgment ignoring the legislative function of the State. Such direction would be beyond the jurisdiction of the Tribunal. It is her contention that under Section 15 of the Minor and Minerals (Development and Regulation) Act 1957 the State Government is entitled to notify the rules including their amendments. It is admitted by her that the brick earth was declared as a Minor Mineral by the Government of India in its notification dated 01.06.1958. While it is true that by virtue of the powers under Section 5 (3) of the Environment (Protection) Rules 1986 the Government of India has issued the EIA notification on 14.09.2006, the said notification as per the schedule contained therein is applicable only to minerals and not to the minor minerals. According to her the activities related to minor minerals are not covered under the EIA notification 2006. It is also her submission that the Hon'ble Supreme Court in Deepak Kumar Vs State of Haryana and Ors in the Judgment dated 27.02.2006 has directed

all State Governments and the Union Territories to frame relevant rules in the light of recommendations made by the core group constituted by the MoEF within six months and it was in compliance of the said direction, the U.P. Government has made the 35th Amendment on 23.12.2012 and filed affidavit of compliance before the Hon'ble Supreme Court on 04.03.2013. It is also her case that in respect of mining lease for the area above 5 hectares mining was not permitted without prior environment clearance. According to her when the Hon'ble Supreme Court in the last paragraph has used the word "in the meanwhile" it is deemed to be a time bound order and when once the 35th Amendment of U.P. to the Minor Mineral (Concession) Rule 2012 was notified on 23.12.12, the said last paragraph becomes inapplicable. It is her submission that by virtue of the inherent powers of the legislature, the U.P. Government has passed necessary amendments exempting the manual excavation of earth up to 2 meters as a mining activity. Due to the above said reason also EIA Notification 2006 has no application. She has also submitted that the Hon'ble Division Bench of the High Court in WPC No. 59517 of 2012 in the order dated 11.01.2013 has referred to the amendment and also rule 3 and directed that it shall be open to the State authorities to proceed in accordance with law. Even though said writ petition is stated to be pending even now, according to the learned counsel, the Hon'ble High Court has granted permission to go ahead with the implementation of the amendment. It is her case that if the applicants are affected by the 35th or 37th amendment, their remedy

lies elsewhere. She has stated that one Ravi Chanakya has filed a Public Interest Litigation challenging the 35th Amendment and the same was dismissed by the Division Bench of the Hon'ble High Court on 06.03.2013, however with liberty that if the petitioner is adversely affected he may file another regular writ petition. Admittedly against the said order the matter was admitted by the Hon'ble Supreme Court by notice issued and pending. She submits that when a matter is pending in the Hon'ble Supreme Court it is not open to the Tribunal to proceed further and the Tribunal cannot take any contrary view. It is her submission that the Hon'ble Supreme Court has held that only person who suffered by virtue of enactment can challenge the validity of such provision under Article 226 of the Constitution of India. According to her there is no enforceable right available to the applicants. She has also stated that no one of the applicants has stated as to how he is affected by the functioning of the brick kiln. Therefore, it is her submission that all the applications are devoid of merits and are liable to be dismissed.

24. M.A. No. 767 of 2014

In the meantime the applicants in M.A. No. 767 of 2014 have filed the above said application for issuing orders against the respondents under Section 26 read with Section 28 of the NGT Act, 2010 for wilful disobedience and failure to comply with the order dated 27.09.2013 passed in Original Application No. 288 of 2013 in Chandrapal Singh Vs State of U.P., contending *inter alia* that in spite of the said order of the tribunal dated 27.09.2013, by which

we have restrained any person, company and authority to carry out any digging activities of brick earth or original clay or original earth against the directions issued by MoEF dated 24.06.2013 in any part of the country without obtaining EC from the competent authority, there has been indiscriminate mining of brick earth in the State of Haryana about which the first applicant has made representation to the official respondents on 20.04.2014 and in spite of the same no action has been taken. Therefore, the act of the respondents is in disobedience of the order of the Tribunal and liable for action under Section 26 of the NGT Act. This is countenanced on behalf of the respondents on the ground that the order dated 27.09.2013 has been modified subsequently in 08.10.2013 protecting the amendment notification issued by the Government of U.P. dated 23.12.2012. It is the case of respondents that Haryana Government has also issued similar notification and therefore, by virtue of the modified order, if excavation has been done in accordance with the amendment of the rules carried out by the Haryana Government, the same is not wilful disobedience. It is also stated that the Haryana Government has passed Haryana Minor Mineral Concession, Stocking and Transportation of Mineral under Prevention of Illegal Mining Rules 2012 dated 23.01.2013, thereby permitting excavation of brick earth or ordinary earth up to the depth of 1.5 ms from adjoining ground level by treating that the same is not a mining operation. It is otherwise stated by the respondents that the amendment has been carried out in accordance with the direction given by the Hon'ble Supreme Court

in Deepak Kumar Vs State of Haryana and if anyone is affected by such amendment it is for him to challenge the amendment in the manner known to law and therefore, the application for contempt is not maintainable .

25. The respective Counsel have also made their submissions accordingly which are in line with the submissions made in the original applications.

26. We have heard all the learned Counsel appearing for the Original Application and respondents in extenso apart from the learned Counsel appearing for the applicant in M.A. and the respondents, referred to various documents produced before us including the amendments carried out by the State of U.P. as well as Haryana and carefully considered all the documents by applying our minds. After the said deliberation we have arrived at the crucial issues which are to be determined in the original application as follows:

1. Whether the original applicants are entitled for the relief claimed namely to have the respondents stopped quarrying brick earth without obtaining environment clearance.

2. Whether the amendments stated to have been made by the State of U.P. and Haryana are as per the direction of the Hon'ble Supreme Court issued in Deepak Kumar Vs State of Haryana and Ors. and if not whether such amendments can be ignored and the States can be directed to follow the directions of the Hon'ble Supreme Court, till proper amendments are made.

27. Before adverting to the above said points in detail we would like to narrate certain aspects about the brick earth or ordinary earth used for brick manufacturing in brick kiln which is actually a Minor Mineral as per the provisions of MMDR Act 1957. The above said Mines and Minerals (Development and Regulation) Act 1957 defines Minor Mineral under Section 3 € as follows:

“3.(e) Minor Minerals “means building stones, gravel, ordinary clay, ordinary sand other than sand used for prescribed purposes, and any other Mineral which the Central Government may by notification in the official gazette declare to be a Mineral Mineral.”

The term sand “used for prescribed purposes” which are exempted under the purview of Minor Mineral are clarified in Rule 70 of Mineral Concession Rule 1960 as follows:

“70. **Sand not be treated as Minor Mineral when used for certain purpose-** Sand shall not be treated as Minor Mineral when used for any of the following purposes, namely:

1. purpose of refractory and manufacture of ceramic.
2. metallurgical purposes.
3. optical purposes.
4. purposes of stowing in coal mines.

5. for manufacture of silvicrete cement.

6. Manufacture of sodium silicate.

7. for Manufacture of pottery and glass”

28. In accordance with the powers conferred under Section 3 (e) of MMDR Act and 1957 elicited above, the Central Government has declared the following as Minor Minerals:

1. boulder

2. shingle

3. chalcedony pebbles used for ball mill purposes only

5. limeshell, kankar and limestone used in kilns for manufacture of lime used as building material.

6. murrum

7. brick earth

8. fuller's earth

9. bentonite

10. road metal

11. reh-matti

12. slate and shale when used for building material.

13. marbel

14. stone used for making household utensils.

15. quartzite and sandstone when used for purposes of building or for making road metal and household utensils.

16. saltpetre and

17.ordinary earth (used for filling or levelling purposes in construction or embankments, roads, railways buildings) .

These facts have been dealt with extensively by the Hon'ble Supreme Court in Deepak Kumar Vs State of Haryana and Ors. Reported in 2012 (4) SCC 629. Therefore, it is clear that brick earth is undisputedly a "Minor Mineral"

29. It was pursuant to the Judgment of the Hon'ble Supreme Court referred to above and also after considering the representations received from the brick manufacturers who have raised an issue that digging "brick earth" for making bricks is a small scale activity requiring digging only up to a certain depth and therefore it may not require environment clearance and after considering the report of expert committee constituted by the MoEF on 30.01.2013, the MoEF in its office memorandum dated 24.06.2013 has decided that the activities of borrowing/ excavation brick earth and ordinary earth up to an area less than 5 hectare may be categorised under B2 category subject to various guidelines in terms of the provisions under "7.1 Stage(1-screening)" of EIA Notification 2006.

30. Under the EIA Notification 2006 which is a statutory regulation framed by the Government of India in accordance with the powers conferred under Section 3(2)(V) of the Environment(Protection) Act 1986 and the Rules framed thereunder, the Government has framed an elaborate procedure for granting environment clearance in respect of various activities. While speaking about the stages of prior environment clearance, for new projects, the EIA Notification 2006 contemplates "screening" restricting only to B project activities as Stage 1. In class 7 (I) of the EIA Notification 2006 the Government has further categorised, Category B Project as B1 and

B2 thereby stating that the projects requiring Environment Impact Assessment Authority Report are termed as Category B1 while the remaining are categorised as B2. The said clause further enables the Government to issue appropriate guidelines for categorisation of B1 or B2 projects from time to time. It is in accordance with such enabling powers given under the statutory EIA Notification 2006, the MoEF of Government of India has issued the above said guidelines in the form of office memorandum dated 24.06.2013 which has got an equal legal force. In fact in the said guidelines issued by the MoEF dated 24.06.2013, the Government, while categorising the excavation of brick earth and ordinary earth as B2 category project has issued nearly 12 guidelines. In addition, while authorising State Level Impact Assessment Authority to grant environment clearance for the above said activity it has also permitted the SEIAA to impose any further guidelines for proper implementation and also provision for cancellation in the event of violation of the guidelines. Therefore it is clear that by the statutory regulations, the MoEF has brought within the purview of the EIA Notification 2006, the excavation of brick earth and soil, however by making it as B2 category requiring EC without undergoing the process of public consultation etc.

30. Now, coming to the direction of the Hon'ble Supreme Court in Deepak Kumar Judgment, if the amendment made by the states are in accordance with the Judgment, then as argued by Ms. Savitri and Mr. Sharma, this Tribunal will not have jurisdiction to decide the validity of such amendment. On the other hand, if it is found

that the amendment is not in accordance with the directions of the Supreme Court and it is only a camouflage to get over the Judgment with an ulterior motive, there is no necessity to set aside such amendment and this Tribunal, for that matter any Courts in India subordinate to Supreme Court, can simply ignore such amendments.

31. In Deepak Kumar Vs State of Haryana and Ors, reported in (2012) 4 SCC 629, the Hon'ble Supreme Court was faced with the issue of auctioning of sand quarries in Haryana in the area not exceeding 4.5 hectares in each case in District Panchkula apart from quarrying of minor mineral, road metal, masonry stone mines in District Bhiwani, stone and sand mines in District of Mohindergarh and also the complaint received regarding illegal mining in State of Rajasthan and U.P. At the instance of the Hon'ble Supreme Court, the CEC has made local inspection in U.P., Rajasthan and Haryana regarding illegal mining and also examined whether there has been attempt to flout EIA Notification dated 14.09.2006 by breaking homogeneous area into pieces of less than 5 hectares. CEC has filed its detailed report before the Supreme Court on 04.01.2012. The Supreme Court was informed that the CEC report was silent about the aspects of illegal mining and mining in the areas less than 5 hectares and the report was silent as to whether 1 km distance has been maintained between the mining blocks of less than 5 hectare. The Hon'ble Supreme Court has taken note of the contention raised on behalf of MoEF that mining lease of smaller plot less than 5 hectares should not be

encouraged from the environmental point of view. The Supreme Court has also felt that sand mining on either side of rivers of upstream and downstream is one of the causes for environmental degradation and threat to bio- diversity.

32. As excavation of river bed sands in blocks less than 5 hectare separated by 1 km may have collective impact significance, the Apex Court has referred to a letter of MoEF dated 23.11.2011 wherein the Government of India has referred to a report of the Committee on Minor Minerals under the Chairmanship of the Secretary, Environment and Forest with representatives of various States recommending that lease size of 5 hectare for Minor Mineral, undertaking scientific mining, only in cases of isolated discontinued mineral deposits less than 5 hectares was directed to be considered with a view of preserving mineral conservation. The Supreme Court has also considered that MoEF on receipt of various representations has constituted a Core group under the Chairmanship of Secretary, Environment and Forest to go into the mining of Minor Minerals in the order dated 24.03.2009. The Core group after thorough study has issued guidelines after considering the need to relook the definition of minor mineral, minimum size of lease for adopting eco-friendly scientific mining practices, period of lease, cluster of mine approach for addressing and implementing EMP in case of small mines, depth of mining to minimise adverse impact on hydrological regime, requirement of mine plan for minor minerals, similar to major minerals and reclamation of mined out area, post mine land use, progressive mine plan etc.

33. It was based on the said guidelines, the MoEF has consulted the States and after discussion prepared a draft report. The Supreme Court has considered in paragraph 19 of the Judgment that the draft recommendation of MoEF which includes the issues and recommendations including the definition of minor minerals, apart from the notification of the Central Government including brick earth as minor mineral, size of mine lease, period of mine lease, cluster of mine approach for small sized mines, requirement of mine plan for minor minerals, depth of mining, river bed mining, etc and specifically held in paragraph 20 as follows:

“The Report clearly indicates that operation of mines of minor minerals needs to be subjected to strict regulatory parameters as that of mines of major minerals. It was also felt necessary to have a relook to the definition of “minor minerals” per se. The necessity of the preparation of “comprehensive mines plan” for contiguous stretches of mineral deposits by the respective State Governments may also be encouraged and the same be suitably incorporated in the Mineral Concession Rules, 1960 by the Ministry of Mines”.

34. The Hon'ble Supreme Court has again directed that the State Governments/ Union Territories have to give due weight to the recommendations of MoEF which are made in consultation of the State Government and Union Territories. The Supreme Court has also considered that the Model Rules of 2010 framed by the

Ministry of Mines are very vital for environmental, ecological and bio-diversity point of view and therefore there was a specific direction to the State Governments to frame proper rules under Section 15 of MMDR Act based on the said recommendations. Further the Hon'ble Supreme Court found that the State of Haryana and various other States have not implemented the recommendations of MoEF and the Model Rules of 2010. The relevance of following of the Model Rules has been made expressly clear by the Supreme Court in paragraph 25 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 instream sand and gravel mining causes the degradation of rivers. Instream 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 stream has a direct impact on the stream's physical habitat characteristics”.

35. It was ultimately the Supreme Court reiterating the following of Core group recommendations and MoEF recommendations in making necessary amendments in the mining rules held as follows:

“28. The Central Government also should take steps to bring into force the Minor Minerals Conservation and Development Rules, 2010 at the earliest. The State Governments and UTs also should take immediate steps to frame necessary rules under Section 15 of the Mines and Minerals (Development and Regulation) Act, 1957 taking into consideration the recommendations of MoEF in its Report of March 2010 and model guidelines framed by the Ministry of Mines, Government of India. Communicate the copy of this order to MoEF, Secretary, Ministry of Mines, New Delhi; Ministry of Water Resources, Central Government Water Authority; the Chief Secretaries of the respective States and Union Territories, who would circulate this order to the Departments concerned.

29. We, in the meanwhile, order that leases of minor minerals including their renewal for an area of less than five hectares be granted by the States/Union Territories only after getting environmental clearance from MoEF. Ordered accordingly.

36. Therefore, it is clear that not only the Hon'ble Supreme Court has considered the inclusion of brick earth and soil apart from sand as minor mineral but directed the State Governments to frame

adequate rules based on the MoEF recommendations and Core group 2010 of Ministry of Mines, Government of India. Till such regulations are made the Supreme Court has abundantly made clear in para 29 that lease of minor mineral including renewable for less than 5 hectares to be granted by the State or Union Territory only after clearance from MoEF.

37. If we test the so called amendments stated to have been carried out by the State of U.P. either by the 35th Amendment of the U.P. minor minerals (Concession) Rules 2012 dated 23.12.2012 and the U.P. Minor Minerals (Concession) (37th Amendment) Rules 2014 dated 22.10.2014 apart from the Haryana State Amendments, we are at loss to understand as to how the amendments are in accordance with the directives issued by the Hon'ble Supreme Court in Deepak Kumar Judgment. In fact the amendments have not considered anything about either Core group of Mines Department or the MoEF recommendations at all. The amendments unilaterally state that the mining of earth less than 5 hectare is not covered under the mining activity and that manual mining shall not require EC even though the owners are liable to pay the royalty.

38. The explanation to the amendment dated 22.10.2014 of U.P. states as follows:

“For the purposes of this rule manual digging or manual extraction of ordinary clay, ordinary earth of making bricks and pottery, shall not be treated as mining operations:

Provided that pit created by such digging or extraction shall not be deeper than 2 metres”.

The said provision *prima facie* are totally against the directives issued by the Hon'ble Supreme Court. There is no discussion about the cluster mining. There is nothing to show as to how 2 metres of digging of earth is permitted especially when the said portions are more fertile. Moreover, what will be the distance factor between the two manual digging are not at all mentioned. This being the core issue of concern for the Hon'ble Supreme Court regarding the soil erosion and degradation, we are unable to see any reason to hold that the amendments carried out by U.P. as well as Haryana are in accordance with the directives of the Hon'ble Supreme Court in Deepak Kumar case.

39. Then comes the issue as to whether by virtue of such amendment any person should be directed to approach the Hon'ble High Court challenging the same under Article 226 of the Constitution of India. On the face of it we are satisfied that such amendments carried out so hurriedly and in a half-hearted manner without complying with the directives of the Hon'ble Supreme Court of India, have to be simply ignored and it is not necessary to declare such amendments as illegal. This Tribunal having been created especially for the purpose of preserving the ecological conditions of the country cannot be a standing spectator, simply because some rules are framed hurriedly when the matters are pending in the Tribunal and direct the persons concerned to follow the due process and in the meantime allow soil erosion.

40. Accordingly, we hold that the amendments brought in by the State Government of Haryana and U.P. are to be ignored and in spite of the same, until and unless the State of U.P. and Haryana pass appropriate amendments to their respective mining rules in accordance with the directions issued by the Hon'ble Supreme Court in the Deepak Kumar case, the last portion of the Judgment of the Hon'ble Supreme Court shall continue to be in operation. Accordingly, we allow all the applications. However, we make it clear that until and unless the State of U.P., and Haryana frame the MMDR Rules strictly in accordance with the directives of the Hon'ble Supreme Court in Deepak Kumar case, by considering the MoEF recommendation as well as Core group 2010 of Department of Mines, the Judgment of the Hon'ble Supreme Court shall continue to be applied for minor minerals including the brick earth whatever may be the extent and no lease shall be permitted by the States or the Union Territories before obtaining EC.

41. In so far as it relates to the contempt application regarding the Haryana Legislative amendment and the alleged disobedience, we find that there are no material and particulars given so as to enable this Tribunal to invoke Section 26 of the NGT Act 2010. Accordingly, Miscellaneous application 767/2014 stands dismissed.

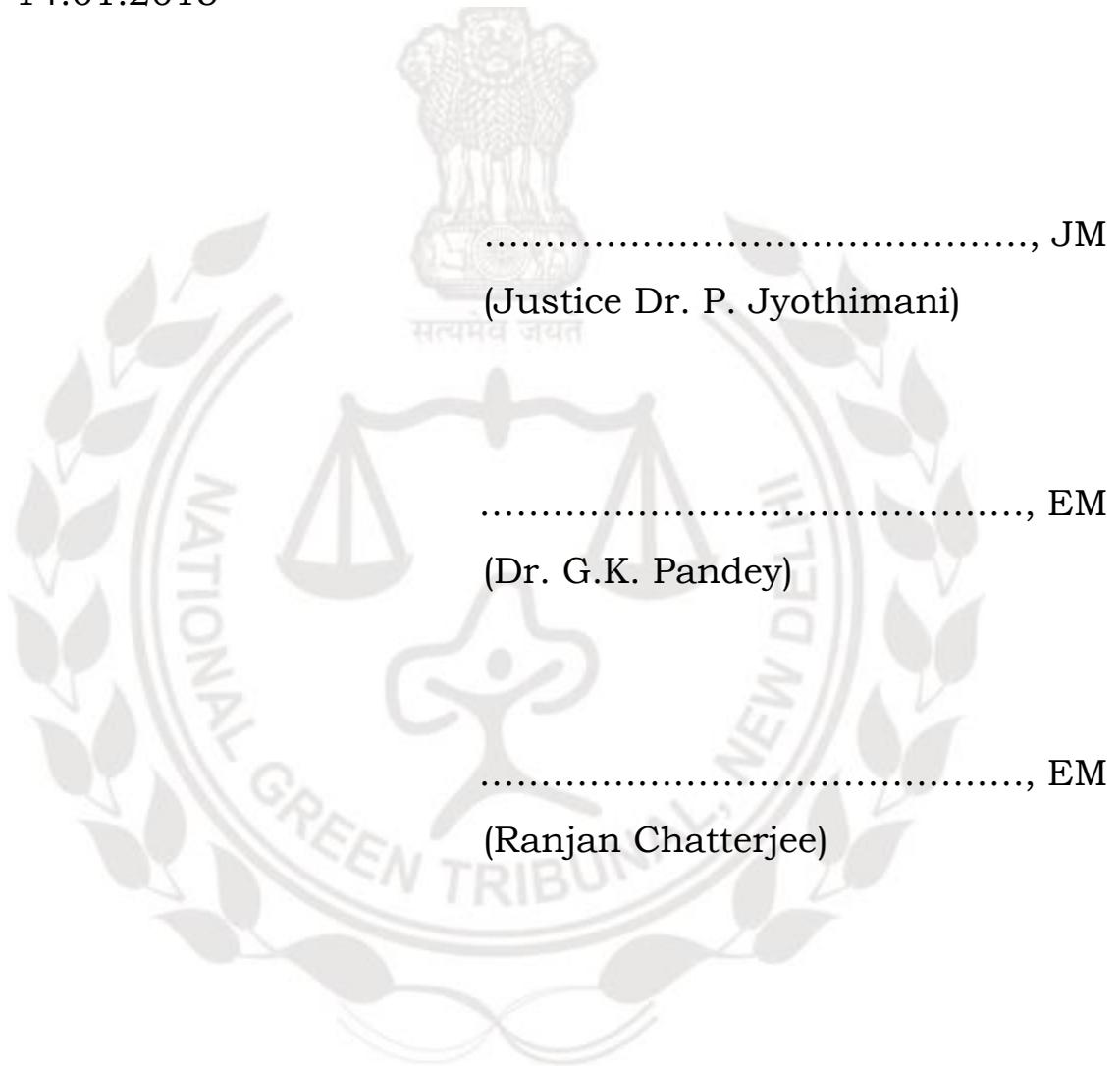
42. In the event of any land owners seeking permission by way of environment clearance from SEIAA for quarrying brick earth either manually or otherwise any application filed shall be considered by the concerned authority in accordance with law and orders passed on merit expeditiously. Since the Original Applications are allowed

all Miscellaneous Applications including the one granting interim relief stand dismissed.

There shall be no order as to cost.

Delhi

Dated. 14.01.2015



....., JM
(Justice Dr. P. Jyothimani)

....., EM
(Dr. G.K. Pandey)

....., EM
(Ranjan Chatterjee)

NGT