$~

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Judgment reserved on: 29.07.2025

% Judgment delivered on: 14.10.2025

\+ W.P.(C) 1945/2023, CM APPL. 7396/2023 & CM APPL. 7397/2023

M/S TARINI MINERALS PVT LTD .....Petitioner

Through: Mr.Nidesh Gupta, Senior Advocate with Mr. Naveen Kumar, Mr.Nitesh Bhandari, Ms. Stuti Bisht, Ms.Maitreya, Mr. Prabhat Kumar Rai, Mr. Ujjawal Kumar Rai, Mr. Bikram Dwivedi and Mr.Aditya Goyal, Advs.

versus

UNION OF INDIA & ANR. .....Respondents

Through: Dr.B.Ramaswamy, CGSC with Ms.Hina Bhargava, Mr.Vikash Kumar, Advs for R-1. Mr.Vinod Kumar, (Under Secretary, Ministry of Mines) .
Mr.Soumyajit Pani with Mr.Aishwary Bajpai, Advs for R-2.

\+ W.P.(C) 5633/2023, CM APPL. 22101/2023 & CM APPL. 22102/2023

M/S TARINI MINERALS PVT. LTD. & ANR. .....Petitioner

Through: Mr.Nidesh Gupta, Senior Advocate with Mr. Naveen Kumar, Mr.Nitesh Bhandari, Ms. Stuti Bisht, Ms.Maitreya, Mr. Prabhat Kumar Rai, Mr. Ujjawal Kumar Rai, Mr. Bikram Dwivedi and Mr.Aditya Goyal, Advs.

Versus

UNION OF INDIA & ANR. .....Respondents

Through: Mr.Soumyajit Pani with Mr.Aishwary Bajpai, Advs for R-2.

CORAM:
HON'BLE THE CHIEF JUSTICE
HON'BLE MR. JUSTICE TUSHAR RAO GEDELA

J U D G M E N T

DEVENDRA KUMAR UPADHAYA, C.J.

1. Since the subject matter of these two writ petitions instituted under Article 226 of the Constitution of India are inter-twined, they were taken up and heard together and are being disposed of by the common judgment and order which follows:

FACTS

2. The facts essential for appropriate adjudication of the issues involved in these petitions are as under:

2.1 On 06.02.1990, a mining lease for iron and manganese ore was granted in favour of one Mr. Niranjan Patnaik, original grantee, for a period of 20 years over an area of 66.368 hectares in Jajang and Khandabandh villages, Barbil situated in the district of Keonjhar (Odisha), which was transferred to the petitioner on 15.10.1995.

2.2 By means of Act No. 10 of 2015, Section 8A was inserted in the principal act, namely, the Mines and Minerals (Development and Regulation) Act, 1957 (hereinafter referred to as the '**MMDR Act**').

2.3 Sub-section (3) of Section 8A provided that all mining leases granted before the commencement of the Act of 2015 shall be deemed to have been granted for a period of 50 years. Act 10 of 2015 came into effect w.e.f 15.01.2015 and, accordingly, by operation of Section 10A(3) of MMDR Act, the lease in favour of the petitioner was got extended for a period of 50 years i.e. from 06.02.1990 till 05.02.2040.

2.4 Section 4A(4) of MMDR Act provides that where a lessee fails to undertake production and dispatch for a period of 2 years after the date of execution of the lease or having commenced production and dispatch, has discontinued the same for a period of two years, the lease shall lapse on expiry of period of 2 years on the date of execution of the lease or from discontinuance of the production and dispatch as the case may be.

2.5 The respondent No.2 – State of Orissa declared the mining lease of the petitioner as lapsed under the said provision by means of an order dated 02.05.2015. The said order declaring the lease to have lapsed, dated 02.05.2015, was challenged by the petitioner before the High Court of Odisha in W.P. (C) No. 995 of 2015 which, by means of an order dated 26.02.2019 quashed the order declaring the lease to have lapsed dated 02.05.2015 and remitted the matter back to the State of Orissa to re-consider the matter in the light of the judgment of the Hon'ble Supreme Court in ***Common Cause v. Union of India and others***, *(2017) 9 SCC 499*.

2.6 In compliance of the said order dated 26.02.2019 passed by the High Court of Odisha, the respondent No.2 passed another order on 25.11.2019 declaring the lease to have lapsed under Section 4A(4) of MMDR Act,

against which the petitioner preferred a Revision Petition before the Central Government (Respondent No.1) under Section 30 of the MMDR Act.

2.7 While the said Revision Petition was pending before the Central Government, the petitioner filed an application on 21.05.2020 before the respondent No.2 under the then existing third proviso appended to Section 4A(4) of MMDR Act seeking revival of the mining lease.

2.8 At this juncture, we may note that under the then existing third proviso appended to Section 4A(4) of MMDR Act which was substituted by Act No. 16 of 2021 w.e.f 28.03.2021, if an application was made by the lessee to the State Government within a period of 06 months from the date of lapse, the State Government could revive the lease on being satisfied that non-commencement and discontinuance of the mining activity was due to reasons beyond the control of the lessee. The said provision permitted the State Government to revive the lapsed lease from such prospective or retrospective date as was deemed fit by the State Government.

2.9 As observed above, Act No. 16 of 2021 whereby the first, second, third and fourth proviso appended to Section 4A(4) of MMDR Act were substituted came into force on 28.03.2021.

2.10 The petitioner filed an application seeking withdrawal of the Revision Petition preferred by it against the order declaring the lease to have lapsed, dated 25.11.2019 with the condition that the Revision Petition may be permitted to be withdrawn in case the State Government revives the lease which was applied for by the petitioner by making an application on 21.05.2020 under the then existing third proviso to Section 4A(4) of MMDR

Act. The Revision Petition, however, was dismissed by the Central Government by means of an order dated 22.09.2021, only by observing, '*The Revisionist submits a petition to withdraw the revision application dated 17.09.2021. The petition is accepted and revision application is treated as withdrawn*'.

2.11 On 02.11.2021, the Central Government issued a notification substituting sub-Rules (7),(8) and (9) of Rule 20 of the Minerals (Other than Atomic and Hydro Carbons Energy Minerals) Rules, 2016 (hereinafter referred to as the '**2016 Rules'**). The substituted sub-Rules (7) of Rule 20 of the 2016 Rules provides that any application for revival of the mining lease submitted under the third proviso appended to Section 4A(4) of MMDR Act prior to commencement of Act No. 16 of 2021, i.e. prior to 28.03.2021, which is not disposed of prior to the said date by the State Government, shall lapse on the said date.

2.12 The revival application dated 21.05.2020 was rejected by the State of Orissa – respondent No.2 by means of an order dated 11.02.2022 not on merits but on the basis of the amendment brought in force in the third proviso to Section 4A(4) of MMDR Act w.e.f 28.03.2021, which dropped the provision prescribing for revival of lapsed lease, and also noticing the amendments brought into force by substituting sub-Rule (7) of Rule 20 of 2016 Rules. Thus, the application seeking revival of the lease was rejected on the basis of the aforementioned amendments brought in force in MMDR Act w.e.f 28.03.2021 and in the 206 Rules w.e.f 02.11.2021.

2.13 The order dated 11.02.2022, while rejecting the prayer for revival of lease also observed, 'that the lease in question shall be treated as lapsed'. By a subsequent order dated 23.02.2022, the petitioner was informed that the possession of the mines, including stock of mineral, plant and machinery, shall be taken over by the Mining Officer. By the said order, the petitioner was also directed to deposit all the outstanding Government dues and to remain present for handing over the possession of the mining lease area along with stock of minerals, buildings structure, machineries etc. to the Mining Officer.

2.14 The petitioner filed a Revision Petition on 07.03.2022, challenging the order dated 11.02.2022, 23.02.2022 and the earlier order dated 25.11.2019. The petitioner also filed an application dated 11.10.2022 seeking restoration of the Revision Petition filed earlier against the order of lapse dated 25.11.2019, which was rejected as withdrawn, by the Central Government by means of an order dated 22.09.2021.

2.15 The restoration application filed by the petitioner was rejected by the Central Government by means of an order dated 02.11.2022, by observing that *'there cannot be any conditional withdrawal that the petitioner shall come back if the sequences of events does not come out in his favour'*.

2.16 One of these two writ petitions namely, W.P.(C) 1945/2023 has been, thus, filed by the petitioner, challenging the order dated 22.09.2021 and the order dated 02.11.2022 along with challenging the validity of Rule 20(7) of the 2016 Rules.

2.17 After the institution of W.P.(C) 1945/2023, the Revision Petition filed by the petitioner on 07.03.2022 has also been dismissed by the Central Government by means of an order dated 10.02.2023. Challenging this order dated 10.02.2023 passed by the Central Government, i.e., the Revisional Authority, the other writ petition, namely W.P.(C) 5633/2023, has been instituted by the petitioner. It is also noticed that apart from challenging the order dated 10.02.2023, dismissing the Revision Petition, the petitioner has also reiterated the prayer seeking a declaration that Rule 20(7) of the 2016 Rules as substituted by way of amendment w.e.f 02.11.2021, is *ultra vires* the MMDR Act. In the alternate, the petitioner has also prayed that a declaration be made to the effect that sub-Rule (7) of Rule 20 of the 2016 Rules does not necessarily mandate that all pending applications for revival of mining lease filed under section 4A(4) of the MMDR Act 1957 should be rendered as lapsed. The petitioner has also sought a declaration to the effect that repeal of the third proviso (wrongly described as the second proviso in the prayer clause) of Section 4A(4) of the MMDR Act does not affect the right of the petitioner which, according to him, got crystallised prior to the said amendment and that the application dated 21.05.2020 made by the petitioner seeking revival of lease should ordered to be decided on merit in accordance with law.

RELEVANT STATUTORY PROVISIONS

3. Certain provisions of MMDR Act and 2016 Rules are relevant to be noted, which are extracted hereunder: -

4. Section 4A(4) of MMDR Act as it existed prior to its amendment incorporated by Act 16 of 2021 w.e.f 28.03.2021 read as under:-

> *"[4-A. [**Termination of prospecting licences, exploration licences or mining leases**].—*
>
> *(1) ...*
>
> *(2) ...*
>
> *[* * *]*
>
> *(3) ...*
>
> *(4) Where the holder of a mining lease fails to undertake [production and dispatch] for a period of [two years] after the date of execution of the lease or having commenced [production and dispatch], has discontinued the same for a period of [two years], the lease shall lapse on the expiry of the period of [two years] from the date of execution of the lease or, as the case may be, discontinuance of the [production and dispatch]:*
>
> *"Provided that the State Government may, on an application made by the holder of such lease before it lapses and on being satisfied that it will not be possible for the holder of the lease to undertake mining operations or to continue such operations for reasons beyond his control, make an order, within a period of three months from the date of receiving of such application, subject to such conditions as may be prescribed, to the effect that such lease shall not lapse:*
>
> *Provided further that such lease shall lapse on failure to undertake mining operations or inability to continue the same before the end of a period of six months from the date of the order of the State Government:*
>
> *Provided also that the State Government may, on an application made by the holder of a lease submitted within a period of six months from the date of its lapse and on being satisfied that such non-commencement or discontinuance was due to reasons beyond the control of the holder of the lease, revive the lease within a period of three months from the date of receiving the application from such prospective or retrospective*

date as it thinks fit but not earlier than the date of lapse of the lease:

Provided also that no lease shall be revived under the third proviso for more than twice during the entire period of the lease."

5. Section 4A(4) which exists as on today having been amended by Act No. 16 of 2021 w.e.f 28.03.2021 is extracted as under:-

*"[**4-A. [Termination of prospecting licences, exploration licences or mining leases**].—*

(1) ...

(2) ...

[* *]*

(3) ...

(4) Where the holder of a mining lease fails to undertake [production and dispatch] for a period of [two years] after the date of execution of the lease or having commenced [production and dispatch], has discontinued the same for a period of [two years], the lease shall lapse on the expiry of the period of [two years] from the date of execution of the lease or, as the case may be, discontinuance of the [production and dispatch]:

[Provided that the State Government may, on an application made by the holder of such lease before it lapses and on being satisfied that it shall not be possible for the holder of the lease to undertake production and dispatch or to continue such production and dispatch for reasons beyond his control, make an order, within a period of three months from the date of receipt of such application, to extend the period of two years by a further period not exceeding one year and such extension shall not be granted for more than once during the entire period of lease:

Provided further that such lease shall lapse on failure to undertake production and dispatch or having commenced the production and dispatch fails to continue the same before the end of such extended period.]"

6. Rule 20 of 2016 Rules which is in relation to lapse, surrender or termination of mining lease granted under MMDR Act as it exists after its amendment brought into force w.e.f 02.11.2021 reads as under:-

> *"**20. Lapsing of the mining lease**.—(1) [Where production and dispatch has] are not commenced within a period of two years from the date of execution of the mining lease, or is discontinued for a continuous period of two years after commencement of [production and dispatch], the mining lease shall lapse.*
>
> *(2) The lapsing of a mining lease shall be recorded through an order issued by the State Government and shall also be communicated to the lessee.*
>
> *(3) [Where a lessee is unable to commence the production and dispatch within a period of two years from the date of execution of mining lease or discontinuation of production and dispatch for reasons beyond its control, he may submit an application to the State Government, explaining the reasons for the same and stating the further time required, at least three months before the expiry of such period of two years:*
>
> *Provided that where the lessee has failed to make the application within the time stipulated above due to the reasons beyond his control but has made application before the lapse of lease under sub-rule (1), the State Government may condone the delay in making the application and in such case the State Government shall pass an order under sub-section (6) before the lapse of lease:*
>
> *Provided further that where the lessee has failed to make the application within the time stipulated above or delay in making the application has not been condoned by the State Government, the lease shall lapse in accordance with sub-rule (1).]*
>
> *(4) Application made under sub-rule (3) shall specify in detail:*
>
> *(a) the reasons on account of which it will not be possible for the lessee to undertake [production and dispatch] or continue [production and dispatch];*

(b) the manner in which such reasons are beyond the control of the lessee; and

(c) the steps that have been taken by the lessee to mitigate the impact of such reasons.

(5) Every application under sub-rule (3) shall be accompanied by a fee of Rupees One lakh.

(6) The State Government shall, after examining the adequacy and genuineness of the reasons for the non-commencement of [production and dispatch] or discontinuance thereof, pass an order, within a period of three months from the date of receipt of the application made under sub-rule (3) or the date on which the mining lease would have otherwise lapsed, [whichever is earlier, either extending the period of two year by a further period not exceeding one year or rejecting such request:]

[Provided that such mining lease shall lapse on failure to undertake production and dispatch or inability to continue production and dispatch within the extended period:

Provided further that such extension shall not be granted for more than once during the entire period of lease.]

[(7) Any application for revival of the mining lease submitted under the third proviso to sub-section (4) of Section 4-A, as it stood prior to commencement of the Mines and Minerals (Development and Regulation) Amendment Act, 2021, namely, the 28th March, 2021, which is not disposed of by the State Government prior to the said date, shall lapse on the said date.]

(10) The State Government shall have the right to enforce the performance security of the lessee to carry out protective, reclamation and rehabilitation measures in the leased area of the mining lease which has lapsed.

(11) The lessee shall pay any expenditure over and above the performance security incurred by the State Government, towards protective, reclamation and rehabilitation measures in the leased area of the milling lease which has lapsed.

[(12) The State Government shall intimate the Indian Bureau of Mines in writing about such lapse of a mining lease.]"

7. Rule 20(7) of 2016 Rules which existed prior to its amendment w.e.f 02.11.2021 reads as under:-

> *"(7) The State Government may, on an application made by the holder of a mining lease submitted within a period of six months from the date of its lapse and on being satisfied about the adequacy and genuineness of the reasons for non-commencement of mining operations or discontinuance thereof was beyond the control of the holder of the mining lease, revive the mining lease within a period of three months from the date of receiving the application from such prospective or retrospective date as it thinks fit but not earlier than the date of lapse of the mining lease.*
>
> *Provided that no mining lease shall he revived for more than twice during the entire period of the mining lease.*
>
> *(8) Application made under sub-rule (7) for revival of the mining lease shall specify in detail.*
>
> *(a) the reasons on account of which the lessee failed to undertake mining operations or continue such operations;*
>
> *(b) the manner in which such reasons are beyond the control of the lessee; and*
>
> *(c) the steps that have been taken by the lessee to mitigate the impact of such reasons:*
>
> *Provided that the State Government may seek such additional information, documents or clarifications with respect to the application as it may require.*
>
> *(9) Every application under sub-rule (7) shall be accompanied by a fee of Rupees One lakh."*

8. Section 6 of General Clauses Act, 1897, is also relevant to be quoted which reads as under:

*"**6. Effect of repeal**.—Where this Act, or any [Central Act] or Regulation made after the commencement of this Act, repeals any enactment hitherto made or hereafter to be made, then, unless a different intention appears, the repeal shall not—*

(a) revive anything not in force or existing at the time at which the repeal takes effect; or

(b) affect the previous operation of any enactment so repealed or any thing duly done or suffered thereunder; or

(c) affect any right, privilege, obligation or liability acquired, accrued or incurred under any enactment so repealed; or

(d) affect any penalty, forfeiture or punishment incurred in respect of any offence committed against any enactment so repealed; or

(e) affect any investigation, legal proceeding or remedy in respect of any such right, privilege, obligation, liability, penalty, forfeiture or punishment as aforesaid;

and any such investigation, legal proceeding or remedy may be instituted, continued or enforced, and any such penalty, forfeiture or punishment may be imposed as if the repealing Act or Regulation had not been passed."

SUBMISSIONS ON BEHALF OF THE PETITIONER

9. Assailing the order passed by the State of Orissa declaring subject lease to have lapsed and also assailing the order rejecting the Revision Petitions and the application seeking restoration passed by the Central Government, it has vehemently been argued by the learned senior counsel for the petitioner that the only basis for not accepting the application for revival and subsequent rejection of Revision Petitions by the State of Orissa and Central Government respectively, is the amendment brought into effect in sub-Rule (7) of Rule 20 of the 2016 Rules w.e.f 02.11.2021 which provides that an application for revival submitted under the then existing

third proviso appended to Section 4A(4) of MMDR Act if not disposed of by the State Government shall lapse.

10. It has further been contended on behalf of the petitioner that sub-Rule (7) of Rule 20 of the 2016 Rule is *ultra vires* the MMDR Act for the reason that Section 13 of MMDR Act does not permit the Central Government to make rules which can be made effective with retrospective effect whereas sub-Rule (7) of Rule 20 provides that applications made for revival of leases prior to amendment in Section 4A(4) i.e. prior to 28.03.2021 shall lapse though amendment in sub-Rule (7) of Rule 20 has been brought into force w.e.f 02.11.2021 on which date application seeking revival of the lease made by the petitioner was pending.

11. According to learned counsel for the petitioner, in respect of the applications made for revival of leases on or after 02.11.2021, it may have been provided for to have lapsed by amending sub-Rule (7) of Rule 20, however, the consequence of amendment in sub-Rule (7) of Rule 20 has been made effective from a retrospective date that is w.e.f 28.03.2021, and not w.e.f the date of amendment i.e. 02.11.2021, which is impermissible.

12. Further submission made on behalf of the petitioner is that no subordinate legislation can be made effective with retrospective effect unless the statute empowers the rule-making authority to make such a rule having retrospective effect. The submission is that since the provisions of MMDR Act do not permit the rule-making authority to make rules effective with retrospective effect as such, Rule 20(7) of the 2016 Rules is *ultra vires* to the Act itself.

13. On behalf of the petitioner, it has further been argued that right of the petitioner seeking revival of lease is a vested right which was available to the petitioner before amendment in Section 4A(4) was brought into force i.e. prior to 28.03.2021 and since application for revival of lease was made prior to the said date i.e. prior to 28.03.2021, on 21.05.2020 as such, the right of consideration of the application for revival could not be taken away by amendment in Section 4 of Section 4(A) of the MMDR Act. His submission is that, in fact, by operation of Section 6 of the General Clauses Act, 1897, 1897 the effect of repeal of the third proviso to Sub-Section (4) of Section 4A of MMDR Act w.e.f 28.03.2021 will not affect the right of seeking revival of the lease in question for the reason that the application for revival was made prior to 28.03.2021. He has further argued that the application seeking revival of the subject lease is, in fact, a remedy which was available to the petitioner prior to repeal of the third proviso appended to Sub-Section (4) of Section 4A(4) of MMDR Act and hence in view of Section 6(e) of General Clauses Act, 1897, such repeal could not take away the right of seeking remedy of revival of the lease which had accrued to the petitioner prior to amendment in Section 4A(4) of MMDR Act i.e. prior to 28.03.2021.

14. It is in the light of the aforesaid submission that an alternate prayer has been made by the petitioner before us that a declaration be made that sub-Rule (7) of Rule 20 of 2016 Rules does not mandate that pending applications for revival of mining lease filed under the third proviso to sub-Section (4) of Section 4A of the MMDR Act will lapse and that the second proviso, appended to Section 4A(4) of MMDR Act on amendment, does not affect the right of the petitioner which, according to him, had crystallized

prior to 28.03.2021, and accordingly, an application seeking revival of the lease dated 21.05.2020 should be ordered to be decided on merits.

15. In support of his submissions reliance has been placed by learned senior counsel for the petitioner on the judgment of the Hon'ble Supreme Court in ***Federation of Indian Mineral Industries and Ors v. Union of India and Anr***., (2017) 16 SCC 186 where, according to the learned senior counsel for the petitioner, it has been held that under the MMDR Act and the Rules made thereunder, the rule making authority i.e. the Central Government does not have power to make any rule applicable with retrospective effect. He has more particularly relied on paragraphs 26 and 29 of the judgment in ***Federation of Indian Mineral Industries*** (supra) which are extracted hereunder:

> *"26. The power to give retrospective effect to subordinate legislation whether in the form of rules or regulations or notifications has been the subject-matter of discussion in several decisions rendered by this Court and it is not necessary to deal with all of them—indeed it may not even be possible to do so. It would suffice if the principles laid down by some of these decisions cited before us and relevant to our discussion are culled out. These are obviously relatable to the present set of cases and are not intended to lay down the law for all cases of retrospective operation of statutes or subordinate legislation. The relevant principles are:*
>
> *(i) The Central Government or the State Government (or any other authority) cannot make a subordinate legislation having retrospective effect unless the parent statute, expressly or by necessary implication, authorises it to do so. [Hukam Chand v. Union of India [Hukam Chand v. Union of India, (1972) 2 SCC 601] and Mahabir Vegetable Oils (P) Ltd. v. State of Haryana [Mahabir Vegetable Oils (P) Ltd. v. State of Haryana, (2006) 3 SCC 620]].*

(ii) Delegated legislation is ordinarily prospective in nature and a right or a liability created for the first time cannot be given retrospective effect. (Panchi Devi v. State of Rajasthan [Panchi Devi v. State of Rajasthan, (2009) 2 SCC 589 : (2009) 1 SCC (L&S) 408])

(iii) As regards a subordinate legislation concerning a fiscal statute, it would not be proper to hold that in the absence of an express provision a delegated authority can impose a tax or a fee. There is no scope or any room for intendment in respect of a compulsory exaction from a citizen. [Ahmedabad Urban Dev. Authority v. Sharadkumar Jayantikumar Pasawalla [Ahmedabad Urban Dev. Authority v. Sharadkumar Jayantikumar Pasawalla, (1992) 3 SCC 285] and State of Rajasthan v. Basant Agrotech (India) Ltd. [State of Rajasthan v. Basant Agrotech (India) Ltd., (2013) 15 SCC 1]]

29. Similarly, Section 13 of the MMDR Act does not confer any specific power on the Central Government to frame any rule with retrospective effect. Sections 9-B(5) and (6) read with clause (qqa) inserted in Section 13(2) of the MMDR Act enable the Central Government to make rules to provide for the amount of payment to be made to the DMF established by the State Government under Section 9-B(1) of the MMDR Act. None of these provisions confer any power on the Central Government to require the holder of a mining lease or a prospecting licence-cum-mining lease to contribute to the DMF with retrospective effect. Therefore, even the scope and extent of the rule-making power of the Central Government is limited."

16. He has also placed reliance on ***Income Tax Officer, Alleppy v. M.C. Ponnoose and Others Etc.***, (1969) 2 SCC 351, ***Hukam Chand Etc. v. Union*** of ***India and Others,*** (1972) 2 SCC 601, ***Vice-Chancellor, M.D. University, Rohtak v. Jahan Singh***, (2007) 5 SCC 77 and ***State of Rajasthan*** and ***Others v. Basant Agrotech (India) Ltd***., (2013) 15 SCC 1.

17. To submit that the impugned Rule 20(7) of 2016 Rules, is violative of Section 6 of the General Clauses Act, 1897, which seeks to protect pending proceedings in case of repeal of a provision, reliance has been placed by learned senior counsel on ***Ambalal Sarabhai Enterprises Ltd. v. Amrit Lal & Co. and Anr***, (2001) 8 SCC 397, ***Neena Aneja and Another v. Jai Prakash Associates Limited***., (2022) 2 SCC 161, ***Har Naraini Devi and Another v. Union of India and Others***, (2022) 18 SCC 470 and ***Executive Engineer, Gosikhurd Project Ambadi, Bhandara, Maharashtra Vidarbha Irrigation Development Corporation. v. Mahesh and Others***, (2022) 2 SCC 772.

18. It is also submitted that the right of a litigant gets crystallised on the date of seeking relief, which would be governed by laws which existed at the time when the litigant acquired such a right. Such right, according to the petitioner, is a right to seek redressal in relation to revival of the lease in question which accrued on the date he filed the application dated 21.05.2020 under the then existing third proviso appended to Section 4A(4) of MMDR Act, therefore, by making sub-Rule (7) of Rule 20 of 2016 Rules, this right of the petitioner cannot be said to have been taken away. In support of this submission, reliance has been placed on ***State of West Bengal and Others v. Mandira Chatterjee and Others***, (2012) 13 SCC 582 and ***Shankarlal Nadani v. Sohanlal Jain***, (2022) 19 SCC 680.

19. The submissions on behalf of the petitioner can be summarised thus:

a. The right accrued to the petitioner on making the application seeking revival of the lease in question on 21.05.2020 cannot be taken away even as a consequence of amendment effected in Sub-Section (4) of Section 4A of

MMDR Act w.e.f 28.03.2021; neither could it be said to have extinguished on amendment brought forth in sub-Rule (7) of Rule 20 of the 2016 Rules by the Central Government w.e.f 02.11.2021.

b. Section 6 of the General Clauses Act, 1897, protects the right of the petitioner to seek remedy of seeking revival of the lease in question as any amendment either in the Act or in the Rules subsequent to making of the application by the petitioner for revival of the lease, would not affect his right to seek the said remedy under the unamended provisions of third proviso appended to sub-Section (4) of Section 4A of MMDR Act.

c. The right of the petitioner to seek remedy stood crystallised on the date the application for revival was made i.e. on 21.05.2020, and therefore, subsequent amendment in the Act or in the Rules will not affect such a right.

d. Amending sub-Rule (7) of Rule 20, so far as the same has been made effective with retrospective effect, is contrary to MMDR Act, and it travels beyond the rule-making authority of the Central Government vested in it under Section 13 of the said Act, for the reason that it does not permit the Central Government to make a rule effective with retrospective effect.

SUBMISSIONS ON BEHALF OF THE RESPONDENTS

20. On behalf of the respondents – Union of India and State of Orissa, it has been argued that amendment in sub-Rule (7) of Rule 20 w.e.f 02.11.2021 is in consonance with the amendment brought about in the corresponding provision of sub-Section (4) of Section 4A of MMDR Act wherein the provision for revival of lease has been done away with, as such

it cannot be said that sub-Rule (7) of Rules 20 of 2016 Rules is in any way repugnant to the Act or it travels beyond the Act.

21. Relying upon the judgment in ***State of T.N. and Another v. P. Krishnamurthy and Others,*** (2006) 4 SCC 517, it has been argued that there is a presumption in favour of the constitutional validity of subordinate legislation and the burden is on the petitioner to show that it is invalid and further that subordinate legislation can be challenged only in case of lack of legislative competence to make the subordinate legislation or violation of fundamental rights or violation of any provision of the Constitution of India or failure to conform to the statute under which such subordinate legislation is made or the same exceeds the limit of authority conferred by the enabling Act or the subordinate legislation is repugnant to laws of the land or suffers from manifest arbitrariness or unreasonableness to the extent where the Court might say that legislature never intended to give authority to make such Rules. Based on the aforesaid judgment, it has been argued on behalf of the respondents that the petitioner has utterly failed to make out any of the grounds available for challenging the amended Rule 20(7) of the 2016 Rules as the petitioner has not been able to establish that there has been any failure to conform with MMDR Act while framing the impugned Rule 20(7) for the reason that the said Rule has been framed/ amended only in tune and in line with the corresponding amendment in sub-Section (4) of Section 4A whereby the third proviso, as it existed prior to the amendment, has been repealed by way of substitution. It is further submitted on behalf of the respondent that any rules made under an Act must be read together with the Act under which such Rules are made and should be interpreted so as to

reconcile with the Act. It is also submitted on behalf of the respondents that in ***P. Kasilingam and others v. P.S.G. College of Technology and others*** (1955) Supp (2) SCC 348, the Hon'ble Supreme Court has held that that the Act and the Rules form part of a composite scheme and many of the provisions of the Act can be put into operation only with the aid of the Rules and, therefore, since in the instant case, sub-Rule (7) of 2016 Rules was amended to give effect to the legislative policy as enunciated by amending the proviso appended to Section 4A(4) of MMDR Act hence, the impugned rule cannot be said to invalid.

22. Refuting vehemently the arguments made on behalf of the petitioner based on the judgment in ***Federation of Indian Mineral Industries*** (supra), it has been argued on behalf of the respondents that the said judgment is being misinterpreted by the petitioner.

23. As regards the submission based on the provisions of Section 6 of the General Clauses Act, 1897, learned counsel for the respondent has stated that Section 6 has no application in the present case for the reason that it is well settled that Section 6 of the General Clauses Act, 1897, applies when repeal is of a Central Act or of a Regulation and not of a Rule. ***Kolhapur Canesugar Works Ltd. v. Union of India***, (2000) 2 SCC 536, is relied upon for this submission by the respondents.

24. It is also contended by learned counsel for the respondents that no right could be said to have crystallised in the petitioner, as the lease had remained non-operational since 06.02.2010, as is apparent from the orders passed by the State Government on 02.05.2015, 25.11.2019 and again on 11.02.2022 declaring the lease to have lapsed. It is also submitted that there

cannot be any right in favour of the petitioner when the lease stood lapsed on account of the petitioner's own default, and therefore, the petitioner cannot be permitted to take undue advantage of its own wrong.

25. Relying upon ***Monnet Ispat & Energy Ltd. v. Union of India and Others***, (2012) 11 SCC 1, a submission has been made by the respondents that so far as mining lease is concerned, there is no fundamental right available to the petitioner, and therefore, it is also argued that the petitioner does not have any exclusive right which can be said to have vested in him seeking grant of license of minerals in view of the law laid down by Hon'ble Supreme Court in ***State of Tamil Nadu v. Hind Stone***, (1981) 2 SCC 205.

26. According to the respondents, as has been held in ***Hind Stone*** (supra), any application for grant of renewal of mining lease should be disposed of on the basis of the rules in force on the date of disposal of such application as no one can be said to have a vested right to grant or renewal of a lease and further that no one can claim a vested right to have an application for grant or renewal of a lease dealt with in a particular way. The submission, thus, is that the application made by the petitioner seeking revival of the mining lease in question has rightly been dealt with in accordance with the provisions which obtained on the date such decision was taken in view of the amendment in Section 4A(4) of the MMDR Act and 2016 Rules.

ISSUES FOR DETERMINATION

27. On the basis of the pleadings of the parties and submissions made by their learned counsel, the issues which emerge in this case for our consideration and determination are as follows:-

a) As to whether impugned sub-Rule (7) of Rule 20 of the 2016 Rules does not conform to MMDR Act, and hence it is ultra vires the Act.

b) As to whether, in view of the provisions of Section 6 of the General Clauses Act, 1897, any right could be said to have accrued in the petitioner on the date application for revival of the lease in question was made by it i.e. 21.05.2020, which right cannot be said to have been affected by amendment in Section 4A(4) of MMDR Act w.e.f 28.03.2021 as also by the amendment in Rule 20(7) of 2016 Rules.

DISCUSSION, ANALYSIS AND FINDINGS

28. Sheet anchor of the argument of learned senior counsel for the petitioner challenging the impugned action on the part of the respondents in rejecting the application seeking revival of the lease in question is that the petitioner's right of consideration of the said application could not be taken away which got crystallised on the date the said application was made i.e. 21.05.2020 and that amendment in Sub-Rule (7) of Rule 20 is *ultra vires* the MMDR Act for the reason that (i) the rule making power of the Central Government under Section 13 of the said Act does not permit rules to be made effective with retrospective effect and (ii) by virtue of the provisions of Section 6 of the General Clauses Act, 1897, right of consideration of the prayer for revival of the mining in lease in question could not be taken away by providing application of amended sub-Rule (7)of Rule 20 of 2016 Rules with retrospective effect.

29. In our considered opinion, the aforesaid contentions raised on behalf of the petitioner are not tenable for the following reasons:

(a) Rule 20(7) as amended w.e.f. 02.11.2021 appears to have been brought into force only with a view to give effect to the amended provisions of Section 4A(4) of MMDR Act, that was amended by Act no.16 of 2021 w.e.f. 28.03.2021, whereby the third proviso, which existed prior to the amendment, was dropped. It is to be noticed that the unamended provision of Section 4A(4) of MMDR Act contained four provisos to sub-Section (4) of Section 4A, of which the third proviso permitted the State Government to revive the lease if the State Government was satisfied that non-commencement and discontinuance of the mining operation was due to reasons beyond the control of the holder of the lease. However, by effecting Act no.16 of 2021 w.e.f. 28.03.2021, the third proviso was dropped, as a consequence of which the power available to the State Government for revival of lease got extinguished. In this view, if Sub-Rule (7) of Rule 20 which existed prior to its amendment on 02.11.2021 was permitted to remain on the statute book, the same would have caused an anomalous situation wherein though the principal act did not permit revival of mining lease but the unamended Sub-Rule (7) of Rule 20 would have permitted such revival. To avoid such anomaly, it appears that Sub-Rule (7) of Rule 20 was amended w.e.f. 02.11.2021, whereby Rule 7 was substituted and Sub-Rules (8) and (9) were dropped. By amending Sub-Rule (7) of Rule 20, it has now been provided that any application for revival of mining lease submitted under the existing third proviso appended to Sub-Section 4 of Section 4A of MMDR Act, which was not disposed of

by the State Government, shall lapse on the date of commencement of the amendment in the Act. In our opinion, to give effect to the amendment brought in Sub-Section (4) of Rule 4A of MMDR Act, the amendment in Sub-Rule (7) of Rule 20, was necessary.

It is thus apparent that Sub-Rule 7 of Rule 20 has been amended in consonance with the amendment brought in Sub-Section (4) of Rule 4A of the MMDR Act, and therefore, it cannot be said that amended Sub Rule 7 of Rule 20 in any way exceeds the Act or travels beyond it.

(b) So far as reliance placed by learned senior counsel for the petitioners on the judgment of Hon'ble Supreme Court in ***Federation of Indian Mineral Industries*** (supra) is concerned, the said judgment has no applicability as far as the issues in this petition are concerned for the reason that in ***Federation of Indian Mineral Industries*** (supra) Hon'ble Supreme Court was dealing with rules notified by the Central Government on 20.08.2015 under Section 9-B(5) & (6) of MMDR Act whereby a provision was made requiring holder of a mining lease to contribute to the District Mineral Foundation (hereinafter referred to as DMF) an amount equivalent to such percentage of royalty not exceeding 1/3rd of such royalty as may be prescribed by the Central Government. This payment towards DMF, as per the said provision, is in addition to royalty. By promulgating Rules of 20.10.2015 the Central Government provided that the amount to be calculated for contribution to be made to DMF shall be paid from the date of notification issued under Section 9-B(1) of the Act by the State Government establishing DMF or the date of coming into force the said Rules, whichever was later. Subsequently, by way of amendment brought

forth in the said notification on 31.08.2016 it was provided that the amount shall be payable w.e.f. 12.01.2015. It is in the light of the said facts that Hon'ble Supreme Court opined that Section 13 of the MMDR Act does not confer any specific power on the Central Government to frame any rule with retrospective effect, however the Supreme Court appears to have held the said legal proposition giving reasoning that sub-ordinate legislation concerning a fiscal statute cannot impose a tax or a fee with retrospective effect in absence of an express provision. Reliance in the said judgment has been placed by Hon'ble Supreme Court on the cases which dealt with fiscal statutes or compulsory exaction from a citizen.

(emphasis supplied)

However, in the instant case what we notice is that the amendment in Sub-Rule (7) of Rule 20 was necessitated on account of amendment in Sub Section 4 of Section 4A of the MMDR Act by means of Act 16 of 2021. It is also to be noticed that the said amendment brought into effect in Section 4A(4) of the MMDR Act is not under challenge in these writ petitions and accordingly if the amended provisions of Section 4A(4) of the MMDR Act, which dropped the provisions relating revival of a mining lease, is to operate, as a necessary requirement Sub-Rule (7) of Rule 20 of 2016 Rules needed an amendment. In fact, the source of bringing forthwith amendment in Sub-Rule (7) of Rule 20 of 2016 Rules can be traced in Section 13 read with the amended provisions of Rule 4A(4) of the MMDR Act.

(c) The other argument pressed into service by the petitioner is that even if retrospective amendment made in Sub-Rule (7) of Rule 20 of 2016 Rules is treated to be valid, the amendment brought forth in Sub-Section (4) of

Section 4A of the MMDR Act will not take away the petitioner's right of consideration of its application made on 21.05.2020 seeking revival of the mining lease. The submission in this regard is based primarily on the basis of provisions of Section 6 of the General Clauses Act, 1897. We may notice that the petitioner has contended that Section 6(e) of the General Clauses Act, 1897, provides that any repeal in a central enactment will not affect any legal proceeding or remedy in respect of any right which stood crystallised before the date of repeal and that the provision of the third proviso appended to unamended Section 4A(4) of the MMDR Act permitted an application to be made by the lease holder for revival of the lease in case it had lapsed for any reason beyond control of the holder of the lease and, thus, such a remedy available to the petitioner cannot be said to have been taken away by effecting the amendment in Section 4A(4) whereby the third proviso, which existed earlier, was dropped.

To appreciate this argument, we may refer to Section 6 of the General Clauses Act, 1897, which provides that where any Central Act is repealed, unless a different intention appears, such a repeal shall not, *inter alia* (i) affect the previous operation of any enactment so repealed or anything duly done or suffered therein, (ii) affect any right, privilege, obligation or liability acquired accrued or incurred under the repealed enactment, (iii) affect any penalty, forfeiture or punishment incurred in reference to any offence committed against the repealed enactment and (iv) affect any investigation, legal proceedings or remedy in respect of any such right or privilege or obligation or liability or penalty or forfeiture or punishment. Thus, what is protected by Section 6 is any legal proceedings or

investigation or remedy, which was otherwise available to a person under the repealed act.

It is to be noticed that Sub-Section (4) of Section 4A of the MMDR Act was amended by way of substitution, whereby the first and second proviso appended to Sub-Section (4) of Section 4A were amended and the third proviso was removed. It is the third proviso, which permitted the State Government to revive the lease on an application to be made by the lessee if the State Government was satisfied that non-commencement or discontinuance of mining operations was due to reasons beyond the control of holder of the lease.

In fact, what is saved by Section 6 of the General Clauses Act,1897, in case of repeal of an Act, is the vested right which had crystallised or accrued in a person prior to repeal or amendment. The question, therefore, for our consideration will be as to whether prior to amendment of Section 4A(4) of MMDR Act, any right had accrued or vested in the petitioner of seeking revival of the lapsed lease. Reference in this regard may be had to the judgment of the Supreme Court in the case of ***Hind Stone*** (supra), wherein it has been held that no one has a vested right to grant or renewal of a lease and none can claim a vested right to have an application for grant or renewal of a lease dealt with in a particular way by applying particular provision. Hon'ble Supreme Court has further observed in the said judgment that in absence of any vested right in anyone, an application for lease has necessarily to be dealt with according to the rules in force on the date of the disposal of the application despite the fact that there is a long delay since making of the application. The aforesaid observations can be

found in para 13 of the judgment in ***Hind Stone*** (supra), which is extracted hereinbelow:-

> *"**13.** ... ... While it is true that such applications should be dealt with within a reasonable time, it cannot on that account be said that the right to have an application disposed of in a reasonable time clothes an applicant for a lease with a right to have the application disposed of on the basis of the rules in force at the time of the making of the application. No one has a vested right to the grant or renewal of a lease and none can claim a vested right to have an application for the grant or renewal of a lease dealt with in a particular way, by applying particular provisions. In the absence of any vested rights in anyone, an application for a lease has necessarily to be dealt with according to the rules in force on the date of the disposal of the application despite the fact that there is a long delay since the making of the application. We are, therefore, unable to accept the submission of the learned counsel that applications for the grant of renewal of leases made long prior to the date of GOMs No. 1312 should be dealt with as if Rule 8-C did not exist."*

In ***Hind Stone*** (supra) Hon'ble Supreme Court has also held that an application for renewal of a lease, in essence, is an application for grant of lease and therefore since no one can be said to have any vested right for grant of lease, as a corollary, it is to be concluded that on one will have vested right of seeking renewal or revival of the lapsed lease.

The facts of the case in ***Hind Stone*** (supra) need to be noticed to clearly comprehend the dictum of Hon'ble Supreme Court as laid down. The State of Tamil Nadu had made Tamil Nadu Minor Mineral Concession Rules, 1959 (hereinafter referred to as Rules, 1959), Rule 8-B whereof provided that the State Government shall be a competent authority to grant

leases in respect of quarrying black granite and that application for grant of quarrying lease shall be made to the Collector, who after scrutiny shall forward the application to the Director of Industries and Commerce who, in turn, was to forward the application to the government after scrutiny.

On 02.12.1977, Rule 8-C in the Rules, 1959 was introduced, and the leases for quarrying black granite in favour of private persons were banned and it was provided that lease can be granted in favour of the Corporation wholly owned by the State Government.

Rule 9 of the Rules, 1959 provided renewal of leases, which was permissible on an application to be made to the Collector. Before introduction of Rule 8-C in the Rules, 1959, which banned leases in favour of the private persons, several persons held leases for quarrying black granite whose leases were about to expire, and they had applied to the Government of Tamil Nadu for renewal of their leases. In some of the cases applications were made prior to introduction of Rule 8-C, and in some of the cases applications were made after Rule 8-C came into force. All the applications were dealt with after Rule 8-C came into force, and all of them were rejected in view of Rule 8-C which banned the leases for quarrying black granite in favour of private persons. The said action of the State of Tamil Nadu was challenged before Madras High Court, questioning the *vires* of Rule 8-C, and it was argued that in those cases in which applications for renewal had been made prior to coming into force of Rule 8-C, their applications should have been dealt with without reference to Rule 8-C. The Madras High Court, however, struck down Rule 8-C on the ground that it exceeded the rule-making power given to the State Government under

Section 15 of the MMDR Act and all the applications were, accordingly, directed to be disposed of without reference to Rule 8-C. The judgment of the High Court was challenged before Hon'ble Supreme Court. The appeals arising out of the applications for grant of renewal for leases for quarrying black granite were allowed, and the writ petitions filed in the High Court were dismissed by Hon'ble Supreme Court.

While allowing the appeals Hon'ble Supreme Court held that though it is true that application seeking renewal of leases should have been dealt with within a reasonable time, however it cannot, on that count, be said that right to have an application disposed of in a reasonable time is coupled with a right to have the application disposed of on the basis of Rules in force at the time of making of the application. Hon'ble Supreme Court further observed that no one has a vested right to grant or renewal of lease, and therefore no one can claim a vested right to have an application for grant of renewal of lease dealt with in a particular way by applying a particular principle. The judgment in ***Hind Stone*** (supra) has been relied upon and quoted with approval by Hon'ble Supreme Court in a later judgment in ***Monnet Ispat & Energy Ltd.*** (supra).

So far as facts of the instant case are concerned, it is not a case of seeking renewal, rather it is case of seeking revival of a lapsed lease. However, for the purpose of ascertaining as to whether right of consideration of the application seeking revival of lapsed lease can be said to be a vested right, in our opinion, there cannot be any distinction between seeking renewal of a lease and revival of a lease.

Right of consideration of the prayer seeking revival of lapsed lease, in our opinion, is akin to right of consideration of a prayer seeking renewal of a lease. Black's Law Dictionary gives the meaning of renewal and revival as follows:-

BLACK'S LAW DICTIONARY	
*"**RENEWAL.** The act of renewing or reviving. A revival or rehabilitation of an expiring subject; that which is made anew or re-established; in law, meaning an obligation on which time of payment is extended; the substitution of a new right or obligation for another of the same nature, a change of something old to something new; to grant or obtain extension of, to continue in force for a fresh period; as commonly used with reference to notes and bonds importing a postponement of maturity of obligations dealt with; an extension of time in which that obligation may be discharged; an obligation being "renewed" when the same obligation is carried forward by the new paper or undertaking, whatever it may be. Campbell River Timber Co. v. Vierhus, C.C.A.Wash., 86 F.2d 673, 675, 108 A.L.R.*	*"**REVIVAL.** The process of renewing the operative force of a judgment which has remained dormant or unexecuted for so long a time that execution cannot be issued upon it without new process to reanimate it. Havens v. Sea Shore Land Co., 57 N.J.Eq. 142, 41 A. 755.* *The act of renewing the legal force of a contract or obligation, which had ceased to be sufficient foundation for an action, on account of the running of the statute of limitations, by giving a new promise or acknowledgment of it."*

763. *There is clear distinction between stipulation to "renew" lease for additional term and one to "extend," in that stipulation to renew requires making of new lease, while one to extend does not. Sanders v. Wender, 205 Ky. 422, 265 S. W. 939, 941."*	

(Black's Law Dictionary, Sixth Edition, St. Paul, Minn. West Publishing Co. 1990)

From the aforequoted denotation of the phrases 'renewal' and 'revival' as they occur in Black's Law Dictionary, we have no room of doubt to observe that in the light of the fact that grant of mining lease is not a vested right, renewal of a lease and revival of a lease are non-distinguishable. Accordingly, in view of the law laid down by Hon'ble Supreme Court in ***Hind Stone*** (supra), we conclude that no one has got any vested right of seeking revival of the lapsed lease or even of consideration of any such prayer.

30. Accordingly, the submission made by learned senior counsel for the petitioner that while effecting the amendment in sub-Section (4) of Section 4A of the MMDR Act, the right vested or accrued, of consideration of prayer/application for revival of the lapsed lease, could not be taken away is misconceived. As a matter of fact, as already observed above, what is saved by Section 6 of the General Clauses Act, 1897, is a vested or accrued right under the repealed Act and since revival of lapsed lease or consideration of

prayer for revival of a lapsed lease is not a vested or accrued right, therefore, the said submission and the ground taken on that basis by the petitioner in our opinion is without any force and, thus, merits rejection.

31. We, accordingly, hold that neither the impugned sub-Rule (7) of Rule 20 of 2016 Rules is *ultra vires* the MMDR Act nor can it be said that merely by making an application seeking revival of the lapsed lease on 21.05.2020 any right got vested or accrued in the petition.

32. In view of the legal principles enunciated in ***Hind Stone*** (supra), the application seeking revival of the lapsed lease was, thus, rightly decided as per the amended Section 4A(4) of the MMDR Act and sub-Rule (7) of Rule 20 of 2016 Rules, which were in force on the date of deciding the said application.

33. The writ petitions, thus, lack merit which, are resultantly dismissed.

34. There will be no orders as to costs.

(DEVENDRA KUMAR UPADHYAYA)
CHIEF JUSTICE

(TUSHAR RAO GEDELA)
JUDGE

OCTOBER 14, 2025
N.Khanna/S.Rawat