

PETITIONER:
THE DIVISIONAL FOREST OFFICERS AND ORS.

Vs.

RESPONDENT:
S.NAGESWARAMMA

DATE OF JUDGMENT: 23/08/1996

BENCH:
RAMASWAMY, K.
BENCH:
RAMASWAMY, K.
G.B. PATTANAIK (J)

ACT:

HEADNOTE:

JUDGMENT:

O R D E R

Leave granted.

We have heard learned counsel on both sides.

This appeal by special leave arises from the order of the Division Bench of the Andhra Pradesh High Court dated July 7, 1995 made in Writ Appeal No.96/94. The admitted facts are, that the respondent had a mining lease granted by the Director of Mines on September 18 1979 to extract mines in the forest area for five years i.e. upto September 12 1984. The Forest (Conservation) Act, 1980 came into force on October 25 1980. Therefore by the date of the expiry of the lease the authorities were denuded of the power to grant renewal of the mining lease. Lease is right to extract minerals and the renewals should be in accordance with the law in operation as on the date of renewal. Renewal of lease being not a vested right the application for renewal; must be disposed of according to law prevailing as on that date. On expiry of the lease period, on September 13 1989, an application came to be made for renewal thereof. It would be obvious that the renewal was in violation of Section 2 of the Forest Conservation Act since admittedly the prior approval of the Central Government was not obtained.

Consequently the Forest Department in the joint inspection made on February 7.1990 discovered that the respondent was extracting mines within the forest area and therefore, they issued directions canceling the lease. Consequently the respondent came to file writ in the High Court. After the joint survey was conducted under the direction of the High Court, the High Court directed the respondent to carry on extraction of the stacked material from the forest area, subject to the respondent's obtaining prior approval of the competent authorities. Thus, this appeal by special leave.

It is contended by Shri Subba Rao, learned counsel for the respondent, that what the respondent had been denied is not making any fresh extraction of the mines in the forest area but only the removing of the stacked minerals from the

surface of the earth, that too, with the permission granted by the authorities: the direction issued by the High Court in the impugned order, therefore, is correct in law. We find no force in the contention. The learned judges have proceeded on the premise that the respondent is entitled to extract and remove minerals, said to be stacked on the ground that the lease is a valid lease: otherwise he does not get any right. The premise on which the Division Bench has proceeded is obviously illegal. Section 2 of the Act prohibits of mining operations if the mines are situated within the forest area. It is a total prohibition, unless the State Government grants mining lease with the prior concurrence of the Central Government. Admittedly, the prior concurrence of the Central Government had not been obtained. Shri Subba Rao sought to place before us the guidelines issued by the Department of Environment and Forest, Government of India in relaxation of Rules/Guidelines under Forest (conservation) Act 1980. Therein the question is of the clearances of the project by the State Government without obtaining the prior concurrence of the Department of Environment and forest. In that behalf it was mentioned that the renewal of the mining leases, if they are within particular radius was directed to be done without any fresh breaking up of fresh area and felling of the trees but subject to re-forestation. It this case that situation does not arise. This is a case of grant of renewal in routine way. Under these circumstances, the direction issued by the Division Bench of the High Court is clearly illegal.

The appeal is accordingly allowed but, in the circumstances without costs.