

REPORTABLE

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NOS. 3187-3188 OF 2011
(Arising out of SLP(C) Nos. 22023-22024 of 2010)

B.R. Surendranath Singh ...Appellant

Versus

Deputy Director, Department of Mines &
Geology, Karnataka and ors. ...Respondents

WITH

CIVIL APPEAL NO. 3189 OF 2011
(Arising out of SLP(C) No. 14120 of 2010)

B.R. Surendranath Singh ...Appellant

Versus

Union of India and ors. ...Respondents

J U D G M E N T

Dalveer Bhandari, J.

1. Leave granted.
2. Since the common questions of law arise in these appeals, they are being disposed of by a common judgment.

3. These appeals emanate from the order dated 25.06.2009 passed in Writ Petition No. 27521 of 2005, order dated 12.04.2010 passed in Review Petition No. 418 of 2009 in Writ Petition No. 27521 of 2005 and interim order dated 29.04.2010 passed in Writ Petition No. 15079 of 2010 by Division Bench of the High Court of Karnataka at Bangalore.

4. The appellant aggrieved by the said orders passed by the High Court of Karnataka has preferred these appeals.

5. For the sake of convenience the facts of Civil Appeal Nos. _____ of 2011 arising out of Special Leave Petition (Civil) NoS. 22023-22024 of 2010 entitled ***B.R. Surendranath Singh v. Deputy Director Department of Mines & Geology & Ors.*** are recapitulated as under.

6. Brief facts according to the appellant are as under:

A mining lease was granted during the year 1958 in favour of B.K.R.N. Singh, the father of the appellant herein, with respect of a land measuring 58 acres situated at Honnebagi and Bellenahalli village, Chikkanayakanahalli

Taluk, Tumkur District, Karnataka. The lease was initially for a period of 20 years and the said period expired in the year 1978. Thereafter, the mining lease was renewed for a further period of 10 years upto 19-10-1988, in the name of Smt. Kamalabai, wife of B.K.R.N. Singh. After the death of Smt. Kamalabai, the appellant is continuing as the lessee and an application for renewal has also been made by the appellant.

7. The appellant is continuing with the quarrying operations and accordingly the appellant has been filing monthly reports with the first respondent – Deputy Director, Department of Mines and Geology, Railway Station Road, Tumkur.

8. Adjacent to the property leased in favour of the appellant, certain persons have illegally conducted mining operations and extracted iron ore. According to the appellant he immediately wrote a letter-cum-undertaking to the respondents that this iron ore of approximately one lakh ton can be taken away by the respondents and the appellant herein has no claim whatsoever over it. The

letter/undertaking dated 20-12-2004 of the appellant is setout as under:

“20-12-2004

From

B.R. Surendranath Singh,
194, 4th Main Road,
Chamarajpet,
Bangalore – 18.

To

The Director,
Dept of Mines and Geology,
Division Road,
Bangalore.

I would like to bring to your kind notice that approximately about 1 lakh ton of iron ore fines has been dumped in my ML area No.2187 and the same material you can take possession and do whatever you deem for and further I have no claim on the above stock.

Thanking you,

Yours faithfully,

Sd/-
B.R. Surendranath Singh”

9. During the month of January, 2005, the respondents found that about one lakh ton of iron ore has been illegally quarried and this illegal material was kept in the appellant’s land and the appellant was directed to protect the said one

lakh ton of iron ore. The appellant immediately acknowledged the approximate stock of one lakh ton of iron ore for which the appellant gave an undertaking to protect the same. The relevant portion of the undertaking is reproduced as under:

“AFFIDAVIT

I, B.R. Surendranath Singh son of late Kamalabai, aged about 70 years, residing at No. 195, 4th Main Road, Chamarajpet, Bangalore 560 019, do hereby solemnly affirm and declare the following:

Whereas the Department of Mines and Geology is having a stock of approximately one lakh ton of iron ore lying at Survey No. 130 of Honnebagi Village, Chikkanaikanahalli Taluk.

We undertake to protect, safeguard and keep safe the said stocks.

BANGALORE
DATED 10/012005

B.R. SURENDRANATH SINGH”

10. It is the case of the appellant that after extracting the iron ore the appellant is required to submit a monthly report and the monthly report indicates the production and dispatch and remaining balance iron ore on the mining lease.

11. It is also the case of the appellant that he was in possession of iron ore which have been legally extracted by him from his leased area and also he is in possession of another one lakh ton of iron ore which is seized by the State Government.

12. According to the appellant, the Deputy Director - the first respondent brought some people on 22.12.2005 who were interested in purchasing the iron ore, for which the first respondent herein actually showed the iron ore legally quarried and stacked by the appellant instead of showing the illegally mined iron ore lying within the borders of the appellant's leased land.

13. The appellant submitted a representation to the respondent No. 1 stating that the error has been rectified and appropriate action be taken in this regard. The appellant made a complaint that instead of illegally mined iron ore, the respondent no. 1 was contemplating to sell the iron ore which was legally mined and accumulated by the appellant.

14. The appellant wrote a letter to the Chief Minister of Karnataka on 23.12.2005 and thereafter filed a writ petition No. 27521 of 2005 before the High Court of Karnataka at Bangalore with the prayer to issue a writ of mandamus restraining the respondents from auctioning the iron ore fines stacked in Survey No. 130, Honnebagi and Bellenhali Village, Chikkanayakanahalli Taluk, Tumkur District and direct the respondents to conduct an inspection, and thereafter determine the iron ore fines, which have been legally extracted by the appellant, and the iron ore fines, which are illegally dumped in the area of the appellant.

15. The High Court by the order dated 27.12.2005 directed respondent No. 1 not to confirm the auction till 30.12.2005. In spite of the interim order granted by the High Court, respondent No. 1 issued another notification dated 21.01.2006, inviting bids for auctioning the iron ore legally quarried by the appellant. The appellant also filed a contempt petition in the High Court that when the matter was pending, the respondents had no authority to issue subsequent notification for auctioning the iron ore.

16. A letter dated 25.02.2006 was issued by the respondent – Deputy Director, Department of Mines and Geology, Tumkur, stating that on a complaint of illegal mining activity and on a visit to the site by the Joint Director, Mysore, it was found that in an area adjacent to the lease of appellant, one Basanth Poddar was doing illegal mining in the area using sophisticated mining machineries and the said Basanth Poddar transported the iron ore, illegally removed it, by using permits of Mining Lease No. 2187 which belongs to the appellant. The letter further states that after inspecting the stock of iron ore unauthorisedly piled by the accused persons the same was quantified at about one lakh metric ton. The letter further states that from the preliminary enquiry it was learnt that one M/s. Balaji Producing Company has been granted the mining lease under Mining Lease No. 2208 covering Survey No. 130 of Honnebagi Village and in Survey No. 12 of Gollarahalli Village and he had given the raising contract for extraction of iron ore to Selvaraj of Sun Minerals and the said Selvaraj claims to have dug a pit at 'Biscuit Pit' and

removed the iron ore and stacked the ore in the area of Mining Lease No. 2187, which is adjacent and owned by the appellant herein. The first respondent thereafter submitted the complaint for prosecution of M/s. Karnataka Mining Company, M/s. Balaji Produce Company, Chennai and their contractor Selvaraj of M/s. Sun Minerals and the appellant herein, who are involved in committing the act of illegal quarrying. The above complaint was registered as Crime No. 52/2006 before the Chikkanayakanahalli Police Station.

17. The appellant filed an application for amendment in the High Court praying for a writ of certiorari and to quash the FIR dated 25.02.2006 registered as Crime NO. 52/2006.

18. The appellant submitted that the respondents filed an application for appointment of a Court Commissioner to identify the iron ore extracted from the area covered by the lease of the appellant. The High Court on 12.10.2006 passed the following order:

“The respondents have filed a memo dated 15.4.2006 for appointment of a Court Commissioner, which reads as follows:-

The petitioner is a mining lease holder and out of large extent of area in Survey No. 130 of Honnebagi Village an area of 58 acres is leased in favour of the petitioner. Apart from the petitioner, others also leased certain extent of land in the same Survey Number. The remaining extent of land in the same survey number continued to be the Government holding, which is rich in mineral deposit. The petitioner who is granted the lease is adjoins by the land retained by the State Government.

It is submitted that unauthorized mining operation in the Government land was detected by the department authorities. Immediately, action has been taken to seize the unauthorized mining iron ore which was deposited on the leased area of the petitioner. After holding mahazar same was handed over to the petitioner for safe custody. The respondent has taken decision to auction the seized iron ore, same was questioned by the petitioner claiming right over the same.

It is humbly submitted that, there is a claim and counter claim in regard to the iron ore stocked on the petitioner's leased area. This can be identified by appointing a Commissioner. The Commissioner requires certain knowledge to ascertain the area by examining the field condition.

It is further submitted that, the iron ore deposited which is illegally mined in the Government land is fine in nature, but iron ore deposited in petitioner's lease area is lumps and fine in nature. The material stocked by the petitioner is nothing but waste and low grade material.

Wherefore, it is requested to appoint any one the following as a commissioner, in the interest of justice and equity.

1. S. Ray Chaudri,
Regional Controller of Mines,
No.29, Industrial Suburb,II Stage, Tumkur Road,
Goraguntepalya,

Bangalore-560 072.

2. Dr. S.K. Bhushan,
Deputy Director General,
Geology Survey of India,
Goa and Karnataka Circle,
Vasudha Bhavan,
Kumaraswamy Layout,
Bangalore – 560 078.

2. As could be seen from the above, there is claim and counterclaim with regard to certain iron ore stacked on the petitioner's leased area. To determine the controversy, Shri Ashok haranahalli, learned counsel appearing for the petitioner and Shri B.N. Prasad, learned H.C.G.P. submit that Dr. S.K. Bhushan, named in the memo may be appointed as a Court Commissioner.

3. In view of the joint submission made by the learned counsel appearing for the parties, I deem it appropriate to appoint Dr. S.K. Bhushan as the Court Commissioner to submit his report to this court relating to the aforesaid controversy between parties, namely as to whether the iron stacked on the petitioner's leased area was extracted by the petitioner from the land leased to him or was illegally extracted from the abutting Government lands. In other words, the Commissioner shall have to identify the illegally extracted iron ore, if any, stacked on the petitioner's leased area after holding spot inspection by issuing notice to the petitioner and R1. This shall be done within three months from the date of receipt of a copy of this order by the Commissioner. The parties shall serve a copy of this order on the commissioner to enable him to do the commission work.

4. The memo filed by the respondents & I.A. 4/2006 filed by the petitioner for appointment of a Court Commissioner stand disposed of in the above terms.

(H.G. Ramesh)
Judge"

19. The High Court appointed Dr. SK Bhushan, Deputy Director General, Geological Survey of India, as the Court Commissioner to inspect and submit a report relating to the controversy between the parties namely, as to whether the iron ore stacked in the leased area of the appellant was extracted by the appellant from the land leased to him or was illegally extracted from the abutting government lands.

20. On 10.01.2007 report was submitted by the Court Commissioner after inspecting and verifying the iron ore found in the area of the lease of the appellant. The Commissioner, after analyzing the chemical qualities of the iron ore found that the dump-in dispute stacked near the crusher in two lots was extracted from the Kamalabai pit (appellant) located in the area leased to the appellant i.e. M.L. No. 2187. The Commissioner further found that no illegally extracted iron ore from the 'Biscuit Pit' located in the Government land is stacked on the leased area of the appellant.

21. On 21.08.2007 the High Court of Karnataka passed the following order:

“Shri R.B. Sathyanarayana Singh, learned Government Pleader appearing for the respondents submits that adequate number of samples are not extracted from the Biscuit Pit. He, therefore, submits that the same Court Commissioner be directed to go to the spot and collect the samples from 3 points in the Biscuit Pit, which are to be identified by the respondents. In this regard, he undertakes to file the memo of instructions for the Court Commissioner.

2. Shri Ashok Haranahalli, learned counsel for the petitioner submits that the earlier appointment of the Court Commissioner was at the instance of the respondents only. The concerned officials of the respondents, who were present on the spot, did not object to the Court Commissioner collecting the samples from the two points in the Biscuits Pit. They did not even suggest that more samples be collected from other points in Biscuit Pit. Despite all these, Shri Ashok Haranahalli fairly submits that he is agreeable to sending the same Court Commissioner to the spot again for collecting the samples from 3 points in Biscuit Pit to be identified by the concerned officials of the respondents with the understanding that the respondents would not raise objection to the second report of the commissioner. He submits that although there is no need for sending the Court Commissioner for the second time to the spot, he is conceding to the respondent's request for the purpose of ensuring finality in the litigation.

3. The Court Commissioner, Dr. SK Bhushan, Deputy Director General, Geological Survey of India, Goa and Karnataka Circle, Vasudha Bhavan, Kumarasamy layout, Bangalore-560078 is hereby directed to go to the spot namely, Biscuit Pit situated in Surveyy. No. 130 of Honnebagi and Ballenahalli Village, Chikkanayakanabhalli Taluk, Tumkur district and collect the samples from 3 points, to be identified by the respondents. On getting the samples tested in authorized laboratory, he shall file his

reports as to whether the dump in dispute (SCK-1, SCK-2 and SCK-3) is extracted from the Biscuit Pit.

4. The office is directed to communicate this order alongwith a copy of the terms of reference filed on behalf of the respondents and also his earlier report, dt. 10.01.2007 to the Court Commissioner forthwith. The office is also directed to prepare the necessary warrant in this regard and issue the same to the court commissioner. The Court Commissioner is directed to go to the spot at 10.30 a.m. on 1.9.2007 for the purpose of collecting the samples. The parties and their respective learned advocates are directed to co-operate with the Court Commissioner in executing the warrant. It is made clear that there is no need for the Court Commissioner to notify the parties of the time and date of inspection. However, if the date and time specified herein does not suit the convenience of the Court Commissioner for whatever reason, then he has to inform the parties of the date and time of holding the spot inspection by him.

5. Further it is also made clear that any intimation sent by the Court Commissioner to the learned Advocates, S/Shri Ashok Haranahalli and Sathayanarayana Singh shall be deemed to have been sent to the parties to the petition. The office shall furnish the mail address of the advocates for the petitioner and the respondents to the Court Commissioner.

6. The Court Commissioner shall submit his report within two weeks from the date of his holding the spot inspection. Tentatively, the Court Commissioner's fees is fixed at Rs.15,000/-. As the Commissioner is being sent for the second time at the instance of the respondents and as the Commissioner's fees were borne by the petitioner's side on the earlier occasion, I deem it fit and necessary to direct both the petitioner and the respondents to bear the Commissioner's fee on 50:50 basis. Both the petitioner and the respondent No. 1 shall deposit Rs.7500/- each with the Court Commissioner within 5 days from today.

7. Call the case immediately after the receipt of the Court Commissioner's report for further submissions.

xxx xxx xxx xxx
xxx xxx xxx xxx

(ASHOK B. HINCHIGRI)
Judge"

22. On 26.11.2007 a further report was submitted by the Court Commissioner in which it is mentioned that material from the Biscuit Pit is distinctly different from the material in the dump in dispute. According to the material in the dump in dispute, the Commissioner further stated that similar inferences were arrived at in the earlier observations also and the presently obtained additional details confirms and compliments the conclusions drawn in the first report.

23. The writ petition was heard by the Division Bench and while dismissing the writ petition the High Court held that the appellant does not have any right over the seized iron ore fines and the report of the Commissioner was not helpful to the appellant to substantiate the contention that the seized iron ore fines are legally extracted by the

appellant from his lease. The appellant also filed Review Petition before the High Court, which was also dismissed.

24. The appellant, aggrieved by the said judgment of the High Court, has preferred these appeals.

25. In pursuance to the notice issued by this court, reply has been filed on behalf of respondents - State of Karnataka. Learned counsel appearing for the State of Karnataka, Ms. Anitha Shenoy has invited our attention to some portions of the counter affidavit.

26. She submits that the entire controversy arose after receiving a complaint from one Selvaraju. The complaint was sent by him to the Secretary of the Mining Department.

The complaint reads as under:-

“From :

Selvaraju,
Raising Contractor,
Hind Mercantile Corporation,
Opp. : Taluk Office,
Chikkanayakanahalli Taluk,
Timkur District,
Karnatka State

To

Smt. Latha Krishna Rao

Secretary to Mining Department
Karnataka Government,
M.S. Building,
Bangalore.

Madam,

Sub.:Large scale illegal Mining in Chikkanayakanahalli encouraged and supported by Mr. Basappa Reddy, Director Mines and Geology, Bangalore.

I am bringing to your notice large scale illegal mining operation by Deepchand Kishanlal, Mining Lease No.2333 and late Kamalabai, Mining Lease No.2187 by her representative Surendra Singh, G.P.A. holder in the rejected Mining lease application belonging to Ganapathi Singh. The illegal working area is called as Biscuit pit. The M.L. Application (earlier PL. No.3317) has been rejected by the Government. The issue and matter is pending in the court. In the meantime, BASANT PODDAR of Deepchand Kishanlal and SURENDRA SINGH have engaged themselves in large scale illegal mining and already moved thousands of tones of iron ore power using the permit of M.L. No.2187 and 2333. The M.L. No.2187 is under renewal and working permission granted by the Director. Illegal mining is done very badly all most creating deaths. The illegal operation is done by the support of the Director Basappa Reddy who is getting Rs.200 per ton commission.

I request you to stop this illegal mining. Refer this illegal mining to the D.C., Tumkur for stoppage. If the issue is referred to Director, no justice will be done as he is totally and fully involved in this illegal act. I hope justice will be upheld at your end.

Many thanks

Yours faithfully

SELVARAJU

Copy to :

1. Sri. T.N. Chaturvedi, Governor of Karnataka, Bangalore
2. Sri. N. Dharam Singh, Chief Minister of Karnataka, Bangalore
3. Sri. K.K. Mishra, Chief Secretary, Government of Karnataka, Bangalore
4. Sri. Mallikarjun Dyaberi, D.C., Tumkur District
5. The Secretary, Government of India, Ministry of Mines, New Delhi.”

27. In pursuance to the said complaint, the officials of the Department of Mines and Geology visited Mining Lease No.2187 on 17.12.2004 and found illegal mining and as such the same was seized and stored in Survey No.130, which is the subject matter of the lease in Mining Lease No.2187. The illegal mining ore which is stored is also depicted in the mahazar dated 17.12.2004 and the same is endorsed by the representative of the holder of Mining Lease No.2187. Perhaps, on the appellant fearing some action on the complaint of Selvaraju, sent a letter dated 20.12.2004 wherein he disowned the iron ore seized. The letter dated 20.12.2004 has been set out earlier in which it is mentioned that 1 lakh ton of iron ore was found lying in Mining Lease No.2187 and the department can take possession and do whatever they deem it fit. He also mentioned that the

appellant has no claim of the above stock. Thereafter on 10.1.2005 the appellant submitted an affidavit with the Government of Karnataka in which it is mentioned that the appellant is undertaking to safeguard and safe keep the said stocks. Respondent no.1 issued a notification on 23.12.2004 but the same could not be acted upon due to various reasons resulting in another notification of 14.12.2005. It seems that the appellant from this point wanted to take advantage of the 1 lakh ton iron ore which could not be lifted by the respondent or sold by him. The notification dated 14.12.2005 was challenged in writ petition No.27521/2005 by the appellant. The appellant obtained an interim stay. The said writ petition was dismissed on 25.06.2009. Thereafter, he filed a Review Petition No.418 of 2009 in writ petition No. 27521 of 2005 which was also dismissed on 12.04.2010. All these orders are the subject matter of these appeals. Since there was no stay granted in the review petition No.418 of 2009, the third notification regarding public auction was issued on 09.12.2009 fixing the date of auction on 24.02.2010. The appellant again moved an interim application in review

petition No.418 of 2009 seeking for stay of auction. The same was declined by the court. From the record of the case, it is quite evident that the appellant went on filing writ petition, review petition and the interim application challenging the third public notification resulting in a direction issued by the High Court for getting an inventory of quantity of iron ore lifted and to be lifted by the successful bidder and surveyed by the Deputy Director of Mines and Geology. The appellant was ready to deposit a sum of Rs.15 crores as to the value of the material and execute an undertaking not to lift the material. This is another new contention raised by him in Writ Petition No.15079 of 2010. The High Court did not grant any interim relief at that stage resulting in filing of these appeals against the order dated 29.04.2010 and subsequently writ petition no. 15079 of 2010 was dismissed as withdrawn reserving liberty to raise all contentions in Criminal Petition No.2104 of 2010.

28. The respondents further submitted that the averments in para 5.4 of the appeal are contrary to what is pleaded in

para 5.1 of the appeals resulting in exposure of appellant's claim of the dumps. Thus, according to the respondents, when the appellant himself is not sure of the iron ore stated to be illegally mined by him, the appellant cannot seek any relief from this court. The respondents submitted that the appellant was required to submit monthly report showing the details of the quantity of iron ore stacked under the mining lease. It must also mention the total production, dispatch and the opening balance. The respondents submitted that the appellant's lease period having expired in the year 1998 itself and filing of renewal application in compliance of Rule 24A of Minor Concession Rules 1960 and failure to produce the statutory requirement like clearance from competent authority for availing the benefit under Rule 24 (A)(6), the appellant has not produced deliberately the working permissions obtained by him for the period from 1998 to 2004 for establishing a fact that he was legally mining. In the absence of renewed mining lease and also failure to produce certificates from the competent authority would indicate that the appellant is not a legal holder of the mining lease.

29. The respondents also submitted that the averments regarding non-transporting the mine ore during the relevant period on the ground of alleged agitation in the period is totally false. In fact, during the years 2003-2004, the appellant has transported huge quantity of iron ore and so also for the period 2004-05. Copy of the statement disclosing the transportation of iron ore from the years 2001-02 to 2005-06 has also been produced with the reply.

30. The respondents submitted that it is clear that the appellant had produced 290960 tons of ore and transported 245372 tons of iron ore than what was permissible at that time which was 5500 metric tons per annum as per IMB plan and also this statement discloses the fact that the appellant is denying any illegal mining and claiming relief for which he is not entitled to in law. In other words, the respondents clearly focused that the appellant had illegally mined iron ore much more than the sanctioned capacity in a clandestine manner and according to the respondents the appellant was not entitled to any relief from this court. The respondents further submitted that the appellant has invented entirely a new story alleging that somebody has

illegally mined and stacked the iron ore in his leased area without his knowledge. According to the respondents it is a false statement and cannot be accepted. According to the respondents, to accumulate 1 lakh ton of iron ore, one has to use thousands of vehicles for transportation and accumulation. Failure on the part of the appellant to disclose the same leads to the presumption that the appellant was involved in illegal mining activity and these activities would result in an action to be taken under section 21 read with section 4(1)(a) of The Mines and Minerals (Development and Regulation) Act, 1957. According to the respondents, the appellant is playing the game of hide and seek and trying to justify this action without compliance of the provisions of the Act. The respondents further submitted that for the first time in the above petition the appellant has introduced a theory of situation of iron ore dumps in northern side and southern side of leased area without disclosing as to where he has stacked the waste produced during the mining activities as per the mining plan. This also substantiates the contention of the respondents, the reason for non production of mining

plan issued from the competent authority along with the map.

31. According to the respondents, the seizure of 1 lakh ton of iron ore from the leased area of the appellant on 17.12.2004 and after the appellant gave a letter dated 20.12.2004 invented new theory to claim the iron ore seized by the department taking undue advantage of the waste dumps stored by him on the northern side of the leased area. The appellant had also filed an affidavit dated 10.01.2005 wherein he has undertaken to protect and save the seized iron ore and pursuant to the said undertaking the appellant was permitted to lift the iron ore produced in his own mine.

32. It may be relevant to submit that the Deputy Director of Mines and Geology, Tumkur, on the instructions from the Director of Mines and Geology, had visited the leased area of Mining Lease No.2187 on 03.01.2006 along with the technical staff and found that the appellant had put a board on his waste dump (stock belonging to Mines and Geology). It is also relevant to mention that the department has not erected any board and this fact was also reported to

the Director on 04.01.2006. The respondents further submitted that on 05.01.2006 in the presence of the persons who were present at the time of seizure Mahazar on 17.12.2004, a detailed location of the seized iron ore was undertaken and in this regard an affidavit of V. Selvaraju was also given. It may be relevant to mention that the appellant filed an affidavit dated 15.02.2006 along with the letter addressed to the Director of Mines and Geology in which he has sworn to the contents that he will not transport either the material which was seized on 17.12.2004 to the extent of 1 lakh ton illegally mined from biscuit pit or stacked illegally near the boundary of Mining Lease No.2187 located at Survey No.130 of the Honnebagi Village, Chikkanayakanahalli Taluk, Tumkur District for 1 lakh ton material that was found lying near the crusher plant and which was mined from Mining Lease No.2187.

33. The respondents further submitted that the continuous act of the appellant involving himself to grab the iron ore from the seized dump resulted in the Deputy Director of Mines and Geology to visit once again the leased area on 28.01.2006 and found that though the appellant

was not permitted to carry out any mining activity or using of crushing unit factually, it was seen that the appellant was engaged in such activities resulting in a notice issued to the appellant on 29.3.2006. The respondent filed a criminal complaint on 25.2.2006 before the Chikkanayakanahalli Police against six persons including the appellant for having indulged in illegal mining activities and committed theft of iron ore and the same was registered in Criminal No.20 of 2006 for an offence punishable under section 21 of The Mines and Minerals (Development and Regulation) Act, 1957 and under section 379 of the Indian Penal Code. It is also mentioned in the affidavit that the auction was completed on 24.02.2010. The respondents also mentioned that the appellant has also filed criminal petition under section 482 Cr.P.C. before the High Court when the court directed the Fast Track Court to dispose of the criminal revision petition within a stipulated period. At this juncture, the appellant withdrew his Criminal Petition No.2104 of 2010 seeking liberty to file criminal revision petition before the District Court, Tumkur challenging the order of the learned Magistrate dated 30.03.2010 and he

has filed criminal revision petition before the District Judge, Tumkur against the order of the learned Magistrate dated 30.03.2010 alleging that the order passed by the learned Magistrate was one behind his back. Though the order specifically stated that the counsel for the appellant was present and produced the copy of the order passed by the High Court of Karnataka in Review Petition No.418 of 2009, the respondent also mentioned that the appellant is venturing all kinds of petitions suppressing the facts. The appellant has an evil desire to grab the iron ore seized and auctioned. According to the respondent, filing of this petition is an ultimate result of abuse of the process of law.

34. The respondents also mentioned that the seizure mahazar drawn on 17.12.2004 shows that the iron ore were lying within the boundaries mentioned in the said mahazar. This is the very same boundary mentioned in mahazar drawn by the police in the year 2006 and the mahazar drawn at the time of handing over of the iron ore to the possession of the highest bidder also reveals the same boundaries. Thus, boundaries in all the three mahazars are one and the same, thereby, establishing that the stand of

the respondent regarding the place where actually iron ore auctioned is situated also negates the stand taken by the appellant in regard to his claim. The respondents further submitted that even the prayer sought in these appeals was never a subject matter in Writ Petition No. 27521 of 2005 and thus the appellant is estopped from seeking this claim as the auction process dated 24.2.2010 is completed and further he had challenged the auction proceedings in writ petition No.15079 of 2010 wherein the High Court refused to interfere with the auction proceedings and the appellant having withdrawn the writ petition No.15079 of 2010. It is mentioned by the respondents that auction of 24.2.2010 was in consonance with the rules and regulations. The respondents also submitted that the appellant having failed in all attempts to stop the public auction, came forward with a plea to deposit Rs.15 crores in Writ Petition No.15079 of 2010, spent some time and allowed the successful bidder to commence lifting of iron ore after depositing the entire amount of Rs.10.10 crores and allowing the bidder to transport the iron ore. The respondents relied on the Audit Report of Kamalabai,

Mining Lease No.2187 from 2000-01 to 2005-06. The same is reproduced as under :

AUDIT REPORT OF SMT. KAMALA BAI, ML NO.2187 FROM 2000-01 TO 2005-06 IS AS BELOW

Year	Production	Dispatch	Opening Balance			Current Year Demand		Total	Recovery		Closing Balance	
			Balance	Interest	Fixed Rent	Royalty	Interest		Royalty/Fixed Rent	Interest	Royalty/Fixed Rent	Interest
2000-01	21600	22160	37055	40388	0	145300	8893	231636	107579	49261	74776	0
2001-02	8900	8900	74776	0	0	79400	17946	172122	61406	17946	92770	0
2002-03	9725	9925	92770	0	0	81475	4745	178990	154682	4745	19563	0
2003-04	150340	121865	19563	0	0	1319807	3393	1342763	1337863	3393	1507	0
2004-05	290960	245372	45582	0	0	2786598	262	2788367	5674011	262	1507	2285906 Excess paid
2005-06	50201	49436	0	0	0	619425	0	619425	3207972	0	0	2588547 Excess paid

r

Deputy Director
Mines and Geology Department

Tumkur

P.S. : In the years 2004-05, the balance indicated in this Chart is 1507, but it should be 45582.

35. The respondents submitted that at that point of time the appellant could legally mine upto to 5500 metric tons only in a year. That limit was increased to 41000 metric tons a year. It is beyond comprehension how illegal iron ore could be found on the Mining Lease No.2187 to the tune of about 1 lakh ton legally mined by the appellant. This was possible only when the appellant had indulged in massive illegal mining.

36. The audit report extracted above clearly indicate that the appellant had quarried and produced iron ore several times more than its permissible limit particularly in the years from 2003 to 2006.

37. The theory of somebody had put 1 lakh ton of iron ore of mining lease is totally untenable and beyond comprehension. 1 lakh ton of iron ore cannot be kept on any mining lease all of a sudden without the knowledge of the appellant. Thousands of trucks have to transport the said quantity of iron ore and if

it did not belong to the appellant he ought to have complained immediately after someone started dumping iron ore on his mining lease. According to the respondent - State, this is a clear case of illegal mining on a massive scale by the appellant.

38. Mr. Ram Naik, learned senior advocate appearing for the auction purchaser contended that the appellant has not approached this court with clean hands. He submitted that the auction purchaser had purchased the entire iron ore and also lifted part of it and has already paid huge money to the respondent. The auction purchaser cannot be denied right to lift the remaining iron ore.

39. We have heard the learned counsel for the parties at length and examined these appeals from various angles. In our considered view, this court ought not to exercise its extraordinary jurisdiction under Article 136 of the Constitution in a matter of this nature. Interim order, if any, stands vacated. These appeals are totally devoid of any merit and are accordingly dismissed with costs.

.....J.
(DALVEER BHANDARI)
.....J.

(DEEPAK VERMA)

**New Delhi;
April 11, 2011**