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## Synopsis

The present Special Leave Petition raises substantial questions of law of public importance. On 21.4.2014, this Hon'ble Court, by its judgement in Writ Petition No.435 of 2012 filed by the present petitioner, issued a series of 7 directions. Before the ink was dry on the judgement, so to speak, the Respondent No. 1, with several others, on 25.4.2014 itself, filed a writ petition in the Bombay High Court (Panaji bench), seeking High Court's intervention to direct the Goa government to consider and grant second renewal of their mining leases despite the judgement dated 21.4.2014. At first, the Respondent No.1 and others sought Court's directions to the Goa government to decide their renewal applications filed in 2006. Thereafter, some amended their petitions, and asked for directions to the Goa Government to execute lease deeds in their favour, as they had paid stamp duty for the lease deeds in crores of rupees after receipt of a demand notice from the Goa government.

The bunch of writ petitions was taken up for final hearing two months later. The High Court was cautioned by the State of Goa in affidavit and arguments that it was still in the process of complying with the directions of this Hon'ble Court in WP No.435 of 2014, only after which it could consider the applications of the interested parties. The counter filed by the state Government squarely informed the High Court that "the prayers [in the petitions] go completely contrary to" this Hon'ble Court's judgement dated 21.4.2014. Nevertheless, the High Court in an unusual instance of judicial overreach and, by the impugned order dated 13.8.2014, directed the Goa Government to "execute the lease

deeds under Section 8 (3) of the MMDR Act in favour of the petitioners/leaseholders who/which have already paid the stamp duty pursuant to the orders of the Government,” on ground of promissory estoppel.

The impugned order, in fact, disembodies the directions issued by this Hon’ble Court and introduces chaos in the proposed scheme of legal and environmentally appropriate mining in Goa laid down by the Supreme Court. Hence this SLP.

The State of Goa has been, in rather difficult circumstances, taking some steps to implement this Hon’ble Court’s 7 directions issued in WP No.435 of 2012, which includes framing a mining policy based on which the Govt will consider the all important issue of grant of mining leases in Goa in the light of the Supreme Court’s declarations and the provisions of law. That direction has now been effectively scuttled by the impugned High Court order.

This Court also directed the Goa govt to initiate action against those mining lessees who have violated Rules 37 and 38 of the Mineral Concession Rules, 1960. The action contemplated could include determination of the leases. Such decision would obviously be in conflict with the High Court’s mandamus to the Goa Govt to execute the lease deeds in favour of the former mining lessees. In fact, the impugned order in fact creates a situation in which the former lessees are able to gain back their leases despite numerous violations, illegalities and investigations.

As the two tables annexed to this SLP show, many of the former leases holders have been involved in transgressions of Sec. 37 of the MCR Act 1960 and this Hon'ble Court in its judgment dated 21.4.2014 has explicitly issued a mandamus to the government to take action on these cases. Most of these violations under Sec. 37 are listed in the CEC Report dated 7.12.2012 and are now reconfirmed by the third report of the Justice Shah Commission of Inquiry into illegal mining in Goa. The Justice Shah Commission report was approved by the Union Cabinet and placed in Parliament only after the judgment dated 21.4.2014. Petitioners crave leave to produce and rely upon the Third Report if and when required in these proceedings.

All the environment clearances granted for these mining leases have been in suspension since 14.9.2012. The MOEF's Expert Appraisal Committee on environment clearances on Goa mining leases (submitted to this Hon'ble Court during the hearings) has determined that the environment clearances granted for more than half the leases in Goa have to be cancelled and the balance have to be kept on hold till necessary NOCs are obtained. It is not known how many of the former lease holders who approached the High Court are recommended for cancellation of their ECs. Some environment clearances have been granted after 21.11.2007 when the leases had already expired, hence they are no longer valid. Some leases do not have an order approving the first renewal of the lease for twenty years while they may have an order for renewal for the first 10 years only. Some leases in fact have expired much before the year 21.11.2007 and this is also shown in the table. Despite there being no provision of

law, the period of the lease was illegally extended by the Goa Government till 21.7.2007. In all such cases, the extension order was passed after the expiry of the lease. Since all the leases have expired, prior EC and FC would have to be once again obtained, especially in view of the cap on production imposed by this Hon'ble Court.

All the former lease owners who petitioned the High Court have been indicted for large scale under invoicing of export consignments by the Justice Shah Commission of Inquiry into illegal mining (Third Report); and for illegally extracting ore and passing it off as dump mining.

The present petitioner was not made a respondent in Writ Petition No.293 / 2014 or any of the others.

Pursuant to the High Court's impugned judgement, petitioner has come to know of a written statement circulated by the Goa Chief Minister in the Goa Assembly that the Goa government will implement the High Court's order and execute the lease deeds that were subject matter of the petitions. It therefore appears that the State of Goa will implement an order of the Bombay High Court, even though it is in derogation of a judgement on the same matter delivered by this Hon'ble Court. Such a situation would reflect adversely on the majesty of this Court and therefore cannot be permitted. Hence this Hon'ble Court's intervention is urgently called for.

The Supreme Court in its judgement in WP No.435 of 2012 inter alia held that:

a) there was no deemed extension in the case of mining leases that had completed the period of their first renewal of 20 years which (in Goa) expired on 21.11.2007.

b) Approval of mining leases under Section 8 (3) of the MMDR Act, 1957, proceeded on an altogether different footing from first renewals under Section 8 (2) of the MMDR Act.

c) An application for a first renewal under 8 (2) of the MMDR Act entitled the lessee to deemed extension (and consequent mining activity) till the State Government passed an order on his application. This entitlement of deemed extension (and consequent mining activity) was not available in the case of applications for second renewals which had to be decided under Section 8 (3).

Based on this interpretation of the MMDR Act 1957 and Rules, the Supreme Court declared that the deemed mining leases of the lessees in Goa have expired on 22.11.2007 and consequently mining by the lessees after 22.11.2007 was illegal.

Prior to the filing of WP 435 of 2012 and the aforesaid Apex Court's judgement, the State of Goa had, in 2009 / 2010, approved and notified 8 mining leases as second renewals under Section 8 (2) of the MMDR. In 2012, the Goa Govt passed the Indian Stamp (Goa Amendment) Act, 2012, and in February 2013 the Govt issued notice to some of the lessees requiring them to pay stamp duty charges for renewal of their leases, which many paid from March 2013 onward. In toto, the Govt received stamp duty fees for renewal of around 27 mining leases. It is some of these lessees who approached the High Court for execution of

lease deeds in their favour, as they had paid money for the same and been given in-principle clearance. However, in view of this Court's judgement dated 21.4.2014 and its declaration and directions, the old orders stood ipso facto cancelled and a re-think on mining policy and grant of leases was called for.

The High Court, however, in its judgement, in an unusual move, has re-categorised the eight mining leases which were notified as renewed under Section 8 (2), as Section 8 (3) approvals. This could not have been the case of the lessees / petitioners as the record (gazette notifications) showed otherwise. Nor was any such argument advanced by the State Government in its affidavits. All these leases stood to be automatically null and void after the judgement dated 21.4.2014.

Similar would be the case with the lessees whose applications for renewal under S. 8 (2) had been given in-principle approval even if they had paid stamp duty.

The payment of stamp duty was accepted prior to this Court's judgement, which by its declaration made the persons and companies including the present Respondent No.1, bereft of any valid leases in their names, the leases having expired in 2007 itself. Dead leases cannot be revived. Fresh applications would have to be made for grant of lease under Section 8 (3) and the Government would have to consider grant of lease only and specifically in the interests of mineral development, which the Court held could be placed for judicial review. Hence, the Supreme Court directed the Goa government to formulate a mining policy and grant "fresh leases" in line with that.

By the same yardstick, the ex-lease holders had no locus for filing the writ petitions on which the impugned judgement has been passed as they do not have a valid lease in their names. They were therefore on the same footing as any other citizen of India.

The grouse of the Respondent No.1 was that seven and a half years had gone by since they applied for renewal of the leases and the government of Goa had not considered their renewal applications. However, the Government is not required by law to pass orders within time frame on Section 8 (3) applications. It may do so only if required in the interests of mineral development. Filing an application in time for a second renewal does not grant the interested person or company any inherent right.

Nor does payment of stamp duty bestow such right. For, the Indian Stamp (Goa Amendment) Act 2012 specifically lays down the return of stamp duty if the lease is rejected. Moreover, the order requiring stamp duty to be deposited itself states that government had only taken an “in principle” decision to renew the lease which, as stated above, this Hon’ble Court has held was impermissible under Section 8 (2). The only grievance of the Respondent No.1 could have been return of the monies deposited as stamp duty.

Promissory estoppel cannot be invoked in cases where further action would be in violation of a statute (in this case, renewals not being under 8 (3)) and violation of a Supreme Court decision as well.



## List of dates

SNo	Date	Event
1	21.11.2007	Period of first renewal of majority of mining leases in Goa State comes to an end (including 3 leases of the Resp.No.1) as per judgement dated 21.4.2014 in Writ Petition No.435 of 2012 also filed by the petitioner, Goa Foundation. Copy of the judgement is at <b>ANNEXURE P-1.</b>
2	2009/2010	State Government renews 8 mining leases under Section 8 (2) of the MMDR Act, 1957. The orders are notified in the Gazette.
3	25.09.2012	Writ Petition No.435 of 2012 is filed by the Goa Foundation in this Court, in the wake of serious allegations made in the report of the Justice M.B. Shah Commission of Inquiry into Illegal Mining in Goa. The Commission highlighted its findings that mining leases in Goa were being operated despite dubious validity.
4	5.10. 2012	This Hon'ble Court grants stay on all mining in the State of Goa.
5	16.11.2012	Goa Govt passes the Indian Stamp (Goa Amendment) Act, 2012. Neither the State Government affidavit nor the Respondent No.1

brings the Act before the High Court, as can be seen from the pleadings and exhibits therein.

- 6    25.02.2013    State of Goa issues notice to the Respondent  
14.02.2013    No.1 demanding stamp duty charges for  
              &  
21.02.2013    renewal of 3 mining leases. Similar notice sent  
16.08.2013    to other mining companies. Copy of one of the  
demand notices dated 21/02/2013 taken from  
the writ petition is at **ANNEXURE P-2**. At the  
time of the demand notice, the Respondent  
No.1 did not have any valid lease. Its leases  
had expired on 21.11.2007.
- 7    11.03.2013    The Respondent No.1 deposited, in total,  
25.03.2013    Rs.120.608 crores in terms of the  
20.11.2013    orders/notices on 11.03.2013, 25.03.2013 and  
20.11.2013 respectively for execution of the  
mining lease deeds in respect of TC No.  
70/1952, 126/1953 and 06/1955.
- 8    Sept-Nov    Writ petition 435/2012 is finally heard on merits  
2013    before this Hon'ble Court and posted for  
perusal of expert committee reports to  
27.3.2014.
- 9    21.4.2014    Judgement is delivered in Writ Petition No.435  
of 2014. Judgement issues several directions  
which are yet to be complied with by the State  
Government including mandamus to take

action against lease holders who had violated provisions of the MMDR Act and the Mineral Concession Rules.

10 25.4.2014 Respondents Nos.1 and 2 file writ petition before the Bombay High Court, Panaji bench, to demand execution of lease deeds in respect of 3 leases for which stamp duty had been paid by them. Copy of the writ petition No.293/2014 is at **ANNEXURE P-3**. State of Goa opposes the admission of the petitions and files a detailed affidavit in which it informs the High Court that the reliefs contemplated “will run completely counter to the Hon’ble Supreme Court as the law is laid down by the Hon’ble Supreme Court. That no application in 2007 was filed for second renewal under 8 (3) of the Act. The affidavit explicitly informed the Court: “These 28 leases were renewed after 2007 when indeed, the Hon’ble Supreme Court has held that Goa Mining leases have expired in the year 2007 and further these leases were renewed under Section 8 (2) which the Hon’ble Supreme Court held that the renewals had to be under Section 8(3).” Copy of the affidavit of Director of Mines is at **ANNEXURE P-4**. Para 2 of the affidavit states that “this Reply may be

treated as a Reply in all the connected matters,” including the writ petition of the Resp.No.1.

- 11     16 July     Writ petition is heard by the Bombay High  
2014     Court (Panaji) and reserved for judgement.
- 12     August 13,     Impugned judgement is passed in the writ  
2014     petition, directing the State Government under  
the doctrine of promissory estoppel to execute  
lease deeds in favour of respondent No.1 (and  
others).
- 13     August 14,     Chief Minister/Minister for Mines in a written  
2014     reply in the Goa Assembly asserts no lease  
renewed under Section 8 (3) of the MMDR Act.
- 14     August 18,     Chief Minister/Minister for Mines in a written  
2014     statement laid on the floor of the Assembly  
states Government will implement the High  
Court order, execute the lease deeds, on the  
grounds that if the lease was not renewed for  
several years, this was the fault of the  
Government and not the mine owners, thus  
ruling out an appeal against the impugned  
order. He also set out a time schedule for  
execution of the leases and for declaration of  
the new mining policy. He stated the leases of  
those who had paid stamp duty would be

renewed by September 20 and the other cases would be decided by the 15<sup>th</sup> of October 2014. This scenario will unfold despite the fact that all the former lease holders have allegations of serious violations and illegalities against them in the reports of the CEC and the Reports of the Justice Shah Commission of Enquiry into Illegal Mining in Goa, notably the Third Report which was not before this Hon'ble Court when it passed its judgement dated 21.4.2014. These liabilities have been placed in a two tables at **ANNEXURE – P8**.

15    September    SLP is filed  
      \_\_\_\_ 2014

**IN THE SUPREME COURT OF INDIA**

[ORDER XVI RULE 4(1)(a)]

CIVIL APPELLATE JURISDICTION

SPECIAL LEAVE PETITION

(UNDER ARTICLE 136 OF THE CONSTITUTION OF INDIA)

(WITH PRAYER FOR INTERIM RELIEF)

SLP (CIVIL) NO. \_\_\_\_\_/2014

POSITION OF PARTIES

IN THE HIGH  
COURT

IN THIS  
HON'BLE  
COURT

BETWEEN

The Goa Foundation with  
registered address at: Rm 7, St  
Britto's Apts, Feira Alta,  
Mapusa 403507 Goa

Not a party

Petitioner

VERSUS

Petitioner No.1

Contesting  
Respondent  
No.1

Petitioner No. 2

Contesting  
Respondent No.  
2

Respondent No.  
3

Contesting  
Respondent No.  
3

Respondent No.  
4

Contesting  
Respondent No.  
4

All are contesting respondents

To

THE HON'BLE CHIEF JUSTICE AND  
HIS COMPANION JUSTICES OF THE  
HON'BLE SUPREME COURT OF INDIA

THE HUMBLE PETITION OF THE  
PETITIONER ABOVENAMED

Most Respectfully Showeth:

1. The present special leave petition has been filed challenging the orders dated 13.8.2014 passed by the Hon'ble High Court of Bombay, Panaji Bench, in Writ Petition No.293 of 2014, by which the Hon'ble High Court has been pleased to issue a direction to the Goa Government to execute several lease deeds of mining companies and individuals, including execution of leases deeds with the Respondent No.1, on grounds of promissory estoppel.
2. QUESTIONS OF LAW:
  - a) Whether the Hon'ble High Court could entertain the petition when the matter was still before the Supreme Court in Writ Petition No.435 (also filed by the petitioner, Goa Foundation)?
  - b) Whether the High Court could have passed an order that for all practical purposes disables the directions issued by this Hon'ble Court issued in its judgement dated 21.4.2014 in Writ Petition No.435/2012?
  - c) Whether the High Court could issue a direction to the Goa Government to mandatorily execute the lease deeds in favour of the Respondent No.1 when Section 8 (3) of the MMDR Act requires the State to decide first whether

renewal of the mining lease is in the interest of mineral development and hence Section 8 (3) of the Act does not lay down any time limit for considering grant of a lease? Whether such a direction can be issued if examined in the context of a plain reading of Section 8 (3)?

- d) Whether the mere acceptance of stamp duty (which is refundable) by the Goa Government could have been held by the Court to be a compelling reason for directing lease deeds to be executed?
- e) Whether the High Court's direction to the State Government to execute the lease deeds solely because stamp duty is paid would not amount to backdoor entry and grant of leases de hors the provisions of the MMDR Act and Rules?
- e) Whether a direction could be given to the Goa Government to execute lease deeds before the Mining Policy is ready when in fact the Supreme Court's order clearly requires the Goa government to grant leases only after formulation of a fresh mining policy?
- f) Whether the High Court could have relied upon the 2013 Mining Policy in view of the statement of the State government that the 2013 Mining Policy had to be modified in the light of this Court's 21.4.2014 judgement and hence at the present there was no Mining Policy existing and new one was under preparation.



- f) Whether a lease deed that has expired after first renewal can be revived, especially in view of 7 and half years of illegal mining by the Respondent No.1 without being in possession of a valid mining lease?
- g) Whether the doctrine of promissory estoppel can be invoked if the statute will be violated? In this case, additionally, if the order of the Supreme Court itself is violated?

3. DECLARATION IN TERMS OF RULE 4(2):

The Petitioner states that no other petition seeking leave to appeal has been filed by it against the order dated 13.8.2014. passed by the Hon'ble High Court of Bombay, Panaji bench, in Writ Petition No. 293 of 2014.

4. DECLARATION IN TERMS OF RULE 6:

That the documents produced along with the Special Leave Petition are true copies of the pleadings/documents which formed part of the records of the case in the High Court of Bombay against whose order the leave to appeal is sought for in this petition.

5. Leave to appeal is respectfully sought for on the following, among other:

GROUNDS

I. Because the Hon'ble High Court erred in passing the impugned order;

II. Because the Hon'ble High Court failed to appreciate that in sum and substance, the order being passed would undermine and render ineffective the directions given in the judgement dated 21.4.2014 in Writ Petition No.435 of 2012 (in which the present petitioner is also the petitioner).

III. Because the Hon'ble High Court failed to appreciate that the writ petitioners lacked locus standi to file the petition as they had already ceased to be legal holders of the leases in question. This Court has already held that they do not have valid leases as from 21.11.2007, when their first renewal ended, without further approval being granted under Section 8 (3) of the MMDR Act, 1957 before the period of expiry. Their leases are dead and dead leases cannot be revived.

IV. Because the Hon'ble High Court failed to appreciate that the Respondents Nos.1 and 2 did not have locus standi to pay the stamp duty in question as their leases were approved under Section 8 (2) of the MMDR Act, and therefore de facto cancelled by the order of this Hon'ble Court dated 21.4.2014.

V. Because the Hon'ble High Court failed to appreciate that no leases after 2007 had been approved under Section 8 (3) till the present time or time of filing of this petition. This information is further confirmed by the Chief Minister/Minister of Mines in writing as recently as 14.8.2014 on the table of the Goa Assembly.

VI. Because the Hon'ble High Court failed to appreciate that the Writ Petition No.435 of 2012, although disposed of in terms of

judgement on merits, has been kept alive in order to take up reports of expert committees set up by it in respect of auction of illegally extracted ores, management plan for mining dumps, and final cap on mining production in the State. The petition will come up on board in April 2015 for further directions. The Respondent No.1 ought to have been directed instead to approach this Hon'ble Court in the facts and circumstances of the case.

VII. Because the Hon'ble High Court has incorrectly concluded that some mining leases had been approved under section 8 (3) of the MMDR Act, when in fact the gazette notifications only refer to section 8 (2) in those cases. The High Court ought not to have attempted to correct or misinterpret perfectly clear notifications published in the gazette and conclude that they were "inadvertently" issued under 8 (2) when this was not the stand of either the Respondent No.1 or the State of Goa in their petition/affidavits.

VIII. Because the Hon'ble High Court failed to appreciate that the Indian Stamp (Goa Amendment) Act also permitted the Government to reject the renewal of the lease and return the amounts taken without interest. In fact, it is doubtful if the Amendment Act was brought to the attention of the Hon'ble High Court by the Respondent No.1 or the Goa government.

IX. Because the Hon'ble High Court's order is otherwise bad in law and on facts and is liable to be set aside;

The petitioner reserves its rights to add to or amend or modify the above stated grounds.

6. GROUND FOR INTERIM RELIEF:

It is respectfully submitted that the impugned order is unprecedented, in addition to being bad in law, perverse and erroneous on facts. The impugned order fundamentally sets back the directions issued in the judgement of this Hon'ble Court in Writ Petition No.435 of 2012 in favour of the Respondent No.1. In this sense, the order will entirely nullify the Apex Court's judgement in crucial aspects. It is respectfully submitted that the applicant/Petitioner has a strong case on merits and there are important issues that arise in the facts and circumstances of the present case, which require the consideration of this Hon'ble Court. Further, in view of the immense implications in disturbing the formation of a new mining policy and fresh regime of leases to be granted within the context of a freshly worked regulatory regime, the judgement ought not to be allowed to stand. It is respectfully submitted that no prejudice would be caused to the Respondents if stay as prayed for were to be granted as the Respondents are in any case without any rights in the matter as their leases expired on 21.11.2007 and were not renewed, as required, prior to the expiry of their leases. Their leases are in fact dead, non-est.

7. MAIN PRAYER: It is prayed that this Hon'ble Court may be pleased to:

- (i) Grant Special Leave to appeal against the order dated 13.8.2014 passed by the Hon'ble High Court of Bombay, Panaji bench, in Writ Petition No. 293 of 2014; and

(ii) Pass such other and further order (s) as may be deemed fit and proper in the facts and circumstances of the case.

8. PRAYER FOR INTERIM RELIEF: It is prayed that this Hon'ble Court may be pleased to ad-interim:

(i) Stay the operation and execution of the order dated 13.8.2014 passed by the Hon'ble High Court of Bombay, Panaji bench, in Writ Petition No. 293 of 2014;

(ii) Restrain the Respondent Nos.3 and 4 from executing any actions in respect of mining companies or individuals in Goa without prior compliance with the directions of this Hon'ble Court dated 21.4.2014 in Writ Petition No.435 of 2012.

(iii) Pass such further and other order(s) as may be deemed fit and proper in the facts and circumstances of the case.

Filed by:

PRASHANT BHUSHAN  
Advocate for the petitioner

Drawn By: Pranav Sachdeva

Drawn on: \_\_\_\_\_, 2014

Filed on: \_\_\_\_\_ 2014