IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on: 13.10.2025

Pronounced on : 09.01.2026

CORAM

THE HONOURABLE MR.JUSTICE MOHAMMED SHAFFIQ

W.P. No.14249 of 2025
and
W.M.P. Nos.16021, 20374 and 17408 of 2025

SAIL Refractory Company Limited,
(A Govt. of India Enterprise)
(A Subsidiary of Steel Authority of India Ltd.)
Post Bag No.565,
Salem-636 005.
Rep. By its Chief Operating Officer ..Petitioner(s)

Vs.

1.Sub-Registrar, Salem West,
Sooramangalam, Salem.

2.District Registrar, Salem West,
Sooramangalam, Salem.

3.The District Collector,
Salem, Salem District.

4.The Inspector General of Registration,
100, Santhome High Road,
Chennai-600 028. ..Respondent(s)

PRAYER : Writ Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Certiorarified Mandamus calling for the records relating to the impugned refusal order bearing No.BK2/1/2025

dated 21.04.2025 passed pursuant to impugned notice bearing impounded document No.I2/2024 dated 29.03.2025 on the file of the 1st respondent and quash the same and consequently direct the 1st respondent to immediately register the deed of transfer dated 16.11.2011 bearing document No.P58/2012 submitted by the petitioner.

(Prayer amended vide order dated 27.06.2025 made in W.M.P. No.17733 of 2025 in W.P.No.14249 of 2025)

For Petitioner(s) : Mr.ARL.Sundaresan
Additional Solicitor General
assisted by Mr.V.P.Raman

For Respondent(s) : Mr.J.Ravindran
Addl. Advocate General (for R1 to R4)
assisted by Mr.U.Baranidharan
Special Government Pleader

Mr.V.Raghavachari
Senior Counsel
for Mr.M.Elumalai for proposed respondents

ORDER

The present writ petition has been filed praying for a writ of Certiorarified Mandamus challenging the records relating to the impugned refusal order bearing No.BK2/1/2025 dated 21.04.2025 passed pursuant to impugned notice impounding Document No.I2/2024 dated 29.03.2025 on the file of the 1st respondent and quash the same and consequently direct the 1st respondent to immediately register the Deed of Transfer (hereinafter referred to as "Subject Deed") dated 16.11.2011

bearing document No.P58/2012 submitted by Petitioner.

2. <u>Facts of the Case:</u>

2.1. Petitioner, SAIL Refractory Company Limited (hereinafter referred to as "SAIL") is a 100% subsidiary of Steel Authority of India Limited incorporated on 23.08.2011, to take over Salem Refractory Unit of M/s. Burn Standard Company Limited (hereafter referred to as "BSCL"). By virtue of nationalization of Burn & Company and Indian Standard Wagon Company vide Burn Company and Indian Standard Wagon Company (Nationalization) Act, 1976, all assets and liabilities stood vested with the Central Government. The same was subsequently transferred to BSCL. BSCL, a Government of India undertaking, held various mining leases in relation to mining of magnesite across thousands of acres in Salem District, granted by the Government of Tamil Nadu under various Government Orders, including G.O. Ms. No. 853 dated 05.06.1979.

2.2. During 2010, BSCL was declared as a Sick Unit. Board of Industrial and Financial Reconstruction (hereafter referred to as "BIFR"), vide letter dated 09.09.2010, approved a Scheme which *inter alia* provided for transfer of its Salem Refractory Unit to the Petitioner.

Thereafter, following an Office Memorandum from the Ministry of Heavy Industries and Public Enterprises dated 17.11.2011, a Deed of Transfer was executed on 16.12.2011 between BSCL and Petitioner (hereinafter referred to as "Subject Deed") for a nominal consideration of Rs.1/-, transferring the unit as a "going concern" including all assets, liabilities, rights, and leasehold interests.

2.3. Petitioner presented "Subject Deed" for registration on 16.04.2012. For over a decade, said registration remained in suspension / limbo, primarily due to Petitioner's request for waiver of stamp duty, which the State Government repeatedly declined as not feasible. Subject document was impounded as No. I-2/2016 on 24.08.2016, for non-payment of appropriate stamp duty. Petitioner remitted stamp duty of Rs. 5,78,39,900/- and registration charges of Rs. 72,30,000/- by March 2025 and sought registration and release.

2.4. Despite the payment of duties demanded, 1st Respondent refused registration of "Subject Deed" vide impugned refusal order bearing No. BK2/1/2025 dated 21.04.2025.

3. Relevant portion of impugned order is extracted hereunder:

"Refused under Section 22A(1)(i) of registration act, 1908 since transfer deed between SRCL and BSCL involves more than

1700 Acres of Government leased lands without any valid title of transfer between the transferor and transferee. Hence, refused under Section 22(A)(1)(i) of registration act, 1908."

P.58/2012 முடக்கம் எண் I 2 /2016 ஆனது முகமதிப்பிற்கு முத்திரைத் தீர்வை செலுத்தப்படாததாலும் 2012 ம் ஆண்டு நிலுவை வைக்கப்பட்டு 2016 ம் ஆண்டு I 2 /2016 ஆக முடக்கம் செய்யபட்டது. மேற்படி ஆவணத்திற்கு நாளது தேதி வரை ஆவணம் தாக்கல் செய்த தேதியிலிருந்து உரிமைக்கான எந்த ஒரு ஆவணமும், பட்டா குத்தகைக்கான உரிமை புதுப்பிப்பதற்கான அரசாணை எதுவும் தாக்கல் செய்யப்படாததால் பலமுறை அவகாசம் அளிக்கப்பட்ட பிறகு BK 2/01/2025 நாள் 21.04.2025 ன் படி பதிவு மறுதளிக்கப்பட்டது .

சேலம் மாவட்ட ஆட்சியர் அவர்கள் ந .க .எண் 1075/2023 – கனிமம் –அ நாள் 03.02.2025 ன் படி 1538 ஏக்கர் அரசு நிலம் என அதிகாரபூர்வமாக ஊர்ஜிதம் ஆகிறது எனவும் இழப்பிட்டு தொகையாக 1609,59,20,227/- செலுத்த வேண்டும் என உத்தரவிட்டதன் அடிப்படையில் அரசு நிலங்கள் என ஊர்ஜிதம் ஆனதால் அரசு நிலங்களை Transfer Deed ல் கைமாற்றிய ஒப்பந்தத்திற்காண பதிவு சட்டம் 1908 பதிவு 22 A1(i) ல் கீழ் படி பதிவு மறுதளிப்பு ஆணையிடப்படுகிறது மேற்படி ஆவணதாரருக்கு (SAIL-SRCL) 20.09.2024 தேதியில் உரிமம் கோரும் அசல் ஆவணங்கள், பட்டா, குத்தகை, உரிமம் , புதுப்பித்த அரசாணை கோரியக் கடிதம் அனுப்பப்பட்டது . 03.02.2025 ல் அவர்களிடம் பெறப்பட்ட கடிதத்தில் ஏறத்தாழ 5 மாதங்கள் ஆகியும் எந்தவொரு ஆவணமும் வழங்கவில்லை என கடிதம் அனுப்பப்பட்டது. 04.02.2025 ன் பிறகு 14.02.2025 ல் அந்நிறுவனம் வழங்கிய கடிதத்தில் மூல ஆவணங்கள் ஏதும் அனுப்பப்படவில்லை 20.02.2025 ல் மீண்டும் கடிதம் அனுப்பப்பட்டது . 25.02.2025 ல் ஆவணம் ஏன் பதிவு மறுக்கக்கூடாது என 15 தினங்களுக்குள் மீண்டும் விளக்கம் கோரி கடிதம் அனுப்பப்பட்டது . 08.03.2025 ல் மாவட்ட ஆட்சியர் சேலம் அவர்களிடம் கலந்தாலோசித்து விளக்கம் வழங்குவதாக தெரிவித்து கடிதம் பெறப்பட்டு , பின்னர் சிறைப்பிடித்த ஆவணத்தை மீட்கும் பொருட்டு முத்திரைத்தீர்வை 29.03.2025 அன்று வசூலிக்கப்பட்டு, அன்றே 15 தினக்களுக்குள் இறுதியாக வாய்ப்பு வழங்கி உரிமை ஆவணங்கள் சமர்ப்பிக்க கோரப்பட்டதற்கு, உரிமம் ஆவணங்கள் எதுவும் அவர்களால் 04.04.2025 அன்று பெறப்பட்டு 20.04.2025 வரை வழங்கப்படாததால் இறுதியாக 7 மாதங்கள்

கழித்து 20.09.2024 முதல் அரசு புறம்போக்கு இடங்களுக்கு அவர்களால் எந்தவித ஆவணங்களும் சமார்பிக்கப்படாததாலும் மாவட்ட ஆட்சியரிடமிருந்து எந்தவித அறிக்கையும் பெற்று தரப்படாததாலும் வேறு வழியின்றி பதிவி சட்டம் 1908 பதிவு சட்ட பிரிவு 22A1(i) ன் கீழ் படி பதிவு மறுத்து 21.04.2025 தேதியில் என்னால் கையெழுத்திடப்பட்டு முத்திரையிட்டு BK 2/01/2025 எண்ணாக ஆவணம் பதிவு மறுதளிக்கப்பட்டது.

3.1. A reading of the impugned order would show that the "Subject Deed" was refused registration *inter alia* on the following grounds:

a. Ownership of the State - 1st Respondent observed that the "Subject Deed" involves several hundreds of acres of land (more than 1700) belonging to State Government.

b. Statutory Bar under Section 22-A of Registration Act (hereinafter referred to as "Act")- Impugned order of the 1st Respondent finds that the subject instrument presented for registration viz., "Subject Deed" was hit by Section 22-A(1)(i) of the Registration Act, 1908, which mandates refusal of registration of instruments relating to transfer of immovable properties by way of sale, lease, mortgage etc., *inter alia* belonging to the State Government, unless sanction of competent authority is obtained.

c. Non-production of original documents – The original documents relating to "Subject Deed" viz., patta, lease deed, license, issuance of G.O. renewing the mining lease was not produced in-spite of the specific directions by the respondent.

3.2. It is against the above order of refusal, the present writ petition has been filed.

4. Case of the Petitioner:

Learned Additional Solicitor General would submit that impugned

order refusing to register the "Subject Deed" between Petitioner and BSCL in terms of the Scheme approved by BIFR is arbitrary and unsustainable *inter alia* for the following reasons:

i) Reliance was placed by Petitioner on the judgment of the Hon'ble Supreme Court in *K. Gopi v. The Sub-Registrar & Ors*[1], to contend that authorities under Registration Act, have no adjudicatory power to decide disputes relating to title, but must register a document if procedural compliances are met and appropriate duties paid.

ii) That subject transfer was not a voluntary transfer but a transfer by operation of law under a Scheme approved by BIFR to revive a sick unit in terms of SICA.

iii) That mining lease in favour of BSCL subsisted on the date of execution of the "Subject Deed", by virtue of the deemed extension in terms of Rule 24A(6) of the Mineral Concession Rules, 1960 (hereinafter referred to as "1960 Rules") read with Rule 72 of the Minerals (Other than Atomic and Hydro Carbons Energy Minerals) Concession Rules, 2016 (hereinafter referred to as "2016 Rules"), which provided for a deemed extension of the lease, if an application has been filed for

1 *2025 SCC OnLine SC 740*

renewal, before expiry of lease tenure. Petitioner would submit that an application was filed by BSCL before expiry of lease, thus in terms of the above Rules, lease ought to be treated as subsisting by virtue of deemed extension inasmuch as the application for renewal has not been disposed of.

iv) That what is conveyed through the "Subject Deed" was only "leasehold rights" by way of assignment, thus Section 22-A of Registration Act, would have no applicability for it only covers instruments relating to transfer of immovable properties by way of sale, gift, mortgage, exchange or lease. It does not include or cover an "assignment of leasehold rights". Thus, impugned order invoking Section 22-A of Registration Act, is wholly misplaced.

v) That the impugned order does not even examine as to whether the transfer is as a "*going concern*", wherein, an amalgam of various assets and liabilities including assignment of leasehold rights relating to mining held by the transferor and implication under Stamp Act and Registration Act.

vi) That Petitioner has been recognized as a lessee by the State as evident from acceptance of royalties, dead rents, and environmental penalties amounting to over Rs.54 Crores. They maintain that various lease are under deemed extension in terms of Rule 24A(6) of the "1960 Rules" and Rule 72 of the 2016 Rules.

5. Case of the Respondents:

i) That under Section 22-A of the Registration Act, registering officer is cast with a duty to refuse registration of any instrument relating to transfer of immovable properties, belonging to State Government, by way of sale, gift, mortgage, exchange or lease unless proper sanction/ authorization is issued by the competent authority.

ii) Admittedly, the lands in question belong to the State Government. The contention urged on behalf of Petitioner that what is sought to be conveyed vide the "Subject Deed" was only leasehold rights by way of assignment, thus, would not attract the bar under Section 22-A of Registration Act, 1908, is preposterous. The above contention fails to see that "lease" is only the nomenclature/title of the Deed, while "leasehold" is the right that is transferred / conveyed under a lease Deed.

In other words, in the absence of "leasehold rights", there would be no lease. Thus, the attempt to suggest that an instrument by which "leasehold rights" are assigned would not attract the bar under Section 22-A of Registration Act, ought to be rejected, else the object of introducing the embargo against registration of instruments relating to transfer of immovable property belonging to State Government by inserting Section 22-A of Registration Act, would be frustrated.

iii) Transferor, BSCL, had no subsisting leasehold interest to convey in 2011, as the original lease had lapsed. Transfer of leasehold right (mining lease) ought to be made strictly in conformity with the Mines and Minerals (Development and Regulation) Act, 1957 (hereinafter referred to as "MMDR"), "1960 Rules" and in terms of the lease Deed entered between State Government and BSCL. The proposed assignment of leasehold rights without obtaining prior consent / approval of the State Government renders the conveyance void.

6 .Discussion:

Having heard both sides, I would think to resolve the controversy, the issues may have to be dealt with under the following heads viz.,

a) Relevance of Section 22 A vis-a-vis *K. Gopi v. The Sub-Registrar & Ors;*

b) Distinction between lease and assignment of leasehold rights – mining lease;

c) Absence of previous consent – Contract Act – Relevance – Implication under Section 22-B of Registration Act;

d) Scheme under BIFR: Sanctity/immunity from challenge;

e) Acceptance of dead rent/royalty by State – indicative of assent by State to enter/renew lease.

7. Relevance of Section 22 A vis-a-vis *K. Gopi v. The Sub-Registrar & Ors*:

7.1. To appreciate the issue, it may be necessary to extract relevant portion of Section 22-A of the Registration Act:

> ***"22-A. Refusal to register certain documents.***— *Notwithstanding anything contained in this Act, the registering officer shall refuse to register any of the following documents, namely:—*
>
> *(1) instrument relating to the transfer of immovable properties by way of sale, gift, mortgage, exchange or lease,—*
>
> *(i) belonging to the State Government or the local authority or Chennai Metropolitan Development*

Authority established under section 9-A of the Tamil Nadu Town and Country Planning Act, 1971;

....

unless a sanction in this regard issued by the competent authority as provided under the relevant Act or in the absence of any such authority, an authority so authorised by the State Government for this purpose, is produced before the registering officer;"

7.2. On a reading of Section 22-A of Registration Act, following position would emerge:

a. Registering officer shall refuse to register any instrument relating to transfer of immovable properties by way of sale, gift, mortgage, exchange or lease, belonging to the State Government, unless a sanction in this regard is issued by the competent authority as provided under the relevant Act and produced before registering officer. In the present case, in relation to assignment of mining lease competent authority would be the authorities under MMDR Act.

b. Section 22-A of Registration Act, starts with non-obstante clause which would show that the above section is intended to have an overriding effect in the event of conflict with any other provision.[2]

2 Union of India v. G.M.Kokil, 1984 (Supp) SCC 196

c. The expression "by way of" preceding various categories/types of transfers mentioned in Section 22 A (1)(i) of Registration Act, would show that they are illustrative and not exhaustive, thus would take within its fold/ambit instrument conveying/transferring leasehold interest/rights.

d. The embargo under Section 22-A of Registration Act is with reference to the class of land viz., lands belonging to State Government and not with reference to parties executing the instrument.

7.3. Decision of Supreme Court in K.Gopi's Case – Relevance in Determining Scope of Enquiry Under Registration Act:

7.3.1. Petitioner placed reliance on the judgment of the Supreme Court in *K. Gopi* to submit that the respondent authority has acted in excess of its jurisdiction in requiring petitioner to produce title documents. The above submission appears to be misplaced for the following reasons:-

a) The Supreme Court in *K.Gopi* primarily dealt with the validity of Rule 55A of the TamilNadu Registration Rules. It did not deal with the validity or otherwise of Section 22A of Registration Act.

b) The facts obtaining in *K.Gopi* would show that it dealt with a

transfer by way of sale of immovable property between two private individuals, thus there was no room for even applying Section 22-A(1)(i) of Registration Act.

c) While Supreme Court in *K.Gopi* did find that a Registrar is not clothed with the jurisdiction to adjudicate or enquire into title, however, it needs to be borne in mind that the Supreme Court was not dealing with a transfer of immovable property belonging to State Government. In view of the duty cast on the registering authority, it would appear that while registering authority may not have jurisdiction to declare title or resolve disputes relating to title, but may be well within its jurisdiction rather under an obligation to refuse registration of an instrument relating to transfer of immovable property by way of sale, gift, mortgage, exchange or lease of lands belonging to State Government unless sanction for such transfer is obtained from competent authority and produced before registering officer.

d) Section 22-A imposes a bar rather mandates the Registering Authority to refuse registration of an instrument relating to transfer of immovable property belonging to State Government by way of sale, gift, mortgage, exchange or lease. The above provision exist on the statute

book even today nor is there any challenge to the validity of said provision. That being the case, the registering officer on presentation of any instruments relating to transfer of immovable property by way of sale, gift, mortgage or lease of lands belonging to State would have to enquire if such transfer is made on obtaining sanction from competent authority that would take within its fold power to call for documents relating to title to verify if the property belongs to the State, if so, requirement of Section 22-A is duly complied. It may do well to remind oneself that it is trite that when power is conferred or a duty is cast to perform an act under a statute, it carries with it power to perform all acts incidental and ancillary to effectuate the power or discharge its obligation. In this regard, it may be useful to refer to the following judgments:

i) Khargram Panchayat Samiti v. State of W.B., (1987) 3 SCC 82 :

> ***"3.*** *..... It accepts that when a power is conferred on a statutory authority, it necessarily carries with it other incidental or ancillary powers and holds that the Panchayat Samiti being vested with the power to grant a licence under Section 117 of the Act had been conferred the power under Rules 7, 8 and 9 to making provision for sanitation, health and hygiene in the market area which is the essence of the power and therefore the Panchayat Samiti had the power to*

see that sanitation, health and hygiene are properly maintained and looked after, and nothing more. ....."

(emphasis supplied)

ii) ***Haryana Suraj Malting Ltd. v. Phool Chand, (2018) 16 SCC 567 :***

"14. *At para 6 in Grindlays [Grindlays Bank Ltd. v. Central Govt. Industrial Tribunal, 1980 Supp SCC 420 : 1981 SCC (L&S) 309] , it was held that the Tribunal can exercise such powers, if it thinks fit, in the interest of justice. It has also been held that the Tribunal is endowed with such incidental or ancillary powers as are necessary to discharge its functions effectively for the purpose of doing justice between the parties, unless there is any express indication in the statute to the contrary. To quote: (SCC p. 423)*

"6. We are of the opinion that the Tribunal had the power to pass the impugned order if it thought fit in the interest of justice. It is true that there is no express provision in the Act or the rules framed thereunder giving the Tribunal jurisdiction to do so. But it is a well-known rule of statutory construction that a Tribunal or body should be considered to be endowed with such ancillary or incidental powers as are necessary to discharge its functions effectively for the purpose of doing justice between the parties. In a case of this nature, we are of the view that the Tribunal should be considered as invested with such incidental or ancillary powers unless there is any indication in the statute to the contrary. We do not find any such statutory prohibition. On the other hand, there are indications to the contrary."

(emphasis supplied)

iii) ***Indian National Congress (I) v. Institute of Social Welfare, (2002) 5 SCC 685*** *:*

> ***"35.*** *..... In such cases, power of the Commission to cancel the registration of a political party is sustainable on the settled legal principle that when a statutory authority is conferred with a power, all incidental and ancillary powers to effectuate such power are within the conferment of the power, although not expressly conferred. ....."*
>
> (emphasis supplied)

iv) ***Maxwell on Interpretation of Statutes[3]:***

> *"where an Act confers a jurisdiction, it impliedly also grants the power of doing all such acts, or employing such means, as are essentially necessary to its execution. ....."*
>
> (emphasis supplied)

e) As stated supra, *K.Gopi* did not deal with Section 22-A of Registration Act nor with lands belonging to State Government. It is trite that a judgment is a precedent for what it decides and not what logically may flow therefrom. In this regard, it may be relevant to refer to the following judgments:

i) ***State of Orissa v. Sudhansu Sekhar Misra, 1967 SCC OnLine SC 17 :***

> ***"12.*** *A decision is only an authority for what it actually decides. What is of the essence in a decision is its ratio and not every observation found therein nor what*

3 ***11th Edn.,*** *contains a statement at p. 350*

logically follows from the various observations made in it. On this topic this is what Earl of Halsbury L.C. said in Quinn v. Leathem [[1901] AC 495] :

> *"... The other is that a case is only an authority for what it actually decides. I entirely deny that it can be quoted for a proposition that may seem to follow logically from it. Such a mode of reasoning assumes that the law is necessarily a logical code, whereas every lawyer must acknowledge that the law is not always logical at all." "*

(emphasis supplied)

ii)Mehboob Dawood Shaikh v. State of Maharashtra, (2004) 2 SCC 362 :

> *"12. ..... That being so, the judgment in Harjeet Singh case [(2002) 1 SCC 649 : 2002 SCC (Cri) 225] does not in any way assist the appellant. There is no such thing as a judicial precedent on facts though counsel, and even judges, are sometimes prone to argue and to act as if they were, said Bose, J., about half a century back in Willie (William) Slaney v. State of M.P. [AIR 1956 SC 116 : (1955) 2 SCR 1140 : 1956 Cri LJ 291] (SCR at p. 1169). A decision is available as a precedent only if it decides a question of law. A judgment should be understood in the light of facts of that case and no more should be read into it than what it actually says. It is neither desirable nor permissible to pick out a word or a sentence from the judgment of this Court divorced from the context of the question under consideration and treat it to be complete law decided by this Court. The judgment must be read as a whole and the*

observations from the judgment have to be considered in the light of the questions which were before this Court. [See CIT v. Sun Engg. Works (P) Ltd. [(1992) 4 SCC 363]"

(emphasis supplied)

iii) Khaja Industries v. State of Maharashtra, 2007 SCC OnLine Bom 579 :

"50. ...*It is well established that a judgment is a precedent for what it decides and not what may appear to logically flow from it."*

(emphasis supplied)

7.3.2. Keeping in view the above principle, it leaves no room for any doubt that the decision of Supreme Court in *K.Gopi* cannot be understood as a precedent for understanding the nature of enquiry that is to be made nor the width of the power available with the Registering authority while invoking Section 22-A of Registration Act to refuse registration of documents/instruments conveying title, right or interest over lands belonging to the State unless the conditions in Section 22-A are duly complied. It is necessary to bear in mind that Section 22-A of Registration Act, is a special provision dealing with properties belonging to the State and registering officer is cast with a statutory duty to refuse

registration where the property belongs to the State and no proper sanction/authorization has been produced in support/validating the transaction/document/instrument relating to transfer of Government land. This is not an exercise in adjudication of title but compliance with a mandatory statutory obligation. I find reliance by petitioner on the decision of Supreme Court in K.Gopi's case in the context of instruments falling under Section 22-A of Registration Act to contend that even documents cannot be called for to examine if the instrument sought to registered falls within the purview of embargo contained in the said Section is misconceived and devoid of merit.

8. **Distinction between lease and assignment of leasehold rights – mining lease:**

8.1. It was next submitted by the learned Additional Solicitor General that what is sought to be transferred under "Subject Deed" *inter alia* only includes transfer of "lease hold rights" and not a lease and thus the embargo under Section 22-A of Registration Act would not get attracted.

8.2. Before proceeding further, it may be relevant to refer to the

relevant clauses in the deed of transfer:

DEED OF TRANSFER:

"....

1.1. NOW THIS INDENTURE WITNESSETH that in pursuance of the said agreement and in consideration of the sum of Re.1/- (Rupee One) only paid at or before the execution of these presents (the receipt whereof the Transferor doth hereby as well as by the receipt hereunder written admit and acknowledge and of and from the payment of the same and every part thereof do hereby acquit release and discharge the Transferee and also the said properties mentioned in the Schedules hereto) the Transferor doth hereby grant transfer sell convey release and confirm unto the said Transferee its successors and assigns and the Transferee acquires and receives from the Transferor all property, movable and immovable including all freehold and leasehold land, buildings, factory, workshops, stores, instruments, machineries and equipments built and installed on the said freehold and leasehold land, cash balances, cash on hand, reserve funds, investments and book debts and all other rights and interest in, or arising out of the Refractory Unit at Salem in the ownership, possession, power or control of the Transferor, all books of account, registers and all other documents of whatever nature relating thereto, all liabilities and obligations related to the refractory Unit at Salem along with all the employees presently working for the

Transferor at the Salem Unit thereof as a going concern on an "as in where is basis" including:

(1) Good will;

(2) All freehold land recited in Recital E and J and more fully described in Parts I, II, III, IV, V, VI, VII of Schedule A and also in Schedule D hereto;

(3) All mining leasehold property recited in Recitals F, G and H and more fully described in parts I, II and III of Schedule B and that recited in Recital I and more fully described in Schedule C hereto;

(4) ..."

8.3. While dealing with the above contention, it may be necessary to bear in mind that BSCL had entered into a lease agreement with the State Government over vast extents of land covering more than 1700 acres belonging to the State of Tamil Nadu, sometime in 1980 for a period of 20 years. The renewal application is stated to be filed by BSCL before expiry of the lease tenure and the same is stated to be pending. It is the case of petitioner that in view of Rule 24A of the "1960 Rules", the lease tenure ought to be treated as deemed to have extended until the subject transfer was made inasmuch as the renewal application was not disposed until then.

8.4. It is the case of the petitioner that the bar under Section 22-A of Registration Act operates only against instruments relating to immovable property by way of sale, gift, lease belonging to State Government, however, what is transferred is assignment of leasehold rights (mining lease). In other words, it was submitted that there is a distinction between *"lease"* and *"leasehold rights"* and the bar under Section 22-A is only with reference to lease and not assignment of leasehold rights of land belonging to State. The above distinction is artificial based on misconception.

8.5. Lease is defined under Section 105 of the Transfer of Property Act while leasehold rights is not defined either under the Registration Act nor under the Transfer of Property Act. In this regard, it may be relevant to refer to the decision of the Supreme Court in ***Union of India Vs. Nareshkumar Badrikumar Jagad***[4], wherein, the scope of lease and leasehold interest (leasehold right may have to be derived therefrom) was explained as under:

> ***"Lease** is the contract by which a rightful possessor of real property conveys the right to use and occupy the property in exchange for consideration. 2. Such a conveyance plus covenants attached to it. 3. The written instrument*

4 (2019) 18 SCC 586

memorializing such a conveyance and its covenants. – also termed lease agreement; lease contract. 4. The piece of real property so conveyed. 5. A contract by which the rightful possessor of personal property conveys the right to use that property in exchange for consideration.

***Leasehold** is a tenant's possessory estate in land or premises, the four types being the tenancy for years, the periodic tenancy, the tenancy at will and the tenancy at sufferance. Although a leasehold has some of the characteristics of real property, it has historically been classified as a chattel real.*

***Leasehold interest** is especially for purposes of eminent domain, the lessee's interest in the lease itself, measured by the difference between the total remaining rent and the rent the lessee would pay for similar space for the same period*."

8.6. It appears that while lease is the instrument/contract which embodies/conveys the right to use and occupy the property, "leasehold rights", though not defined under Transfer of Property Act or MMDR Act, represents the right that is conveyed under an agreement for lease for one that is a right to use and occupy the property. In other words, a lease agreement is an agreement by which leasehold rights gets transferred. There cannot be a lease without transfer of leasehold rights for one is a right and the other is the instrument through which such right is conveyed. In other words, the lease deed is the instrument which

embodies transfer of leasehold right/interest. Thus submission that what is transferred under subject agreement is only leasehold right by way of assignment and not a lease and would not attract bar under Section 22A of Registration Act, appears to be devoid of merit. Distinction, if any that is sought to be made between assignment of leasehold right and lease is artificial rather fanciful. The nomenclature which the parties may choose to give to the said instrument is not determinative of the nature of the instrument. It is trite that Court would look to the substance and not the form in deciding the nature of any instrument. Thus, assignment of mining rights in relation to lands belonging to State, would fall under Section 22-A of Registration Act. In the instant case, "Subject Deed", *inter alia* provides for assignment of mining lease over Government land, thus unless sanction or authorisation in accordance with the Mines and Minerals Development Regulation Act and "1960 Rules" by the competent authority is produced before registering officer, he is cast with a duty to refuse registration of such deed. Interestingly, "mining lease" is defined under section 3(c) of MMDR Act and includes a "sub lease".

8.7. Having found that the land covered under "Subject Deed" belongs to State and assignment of mining lease would be covered under

Section 22A of Registration Act, as a sequitur, registering officer is cast with an obligation/duty to enquire if such transfer is made with sanction of competent authority and absent such sanction, refuse registration of such instrument.

8.8. The contention by the learned Additional Solicitor General that leasehold right is not specifically enumerated/mentioned in Section 22-A of Registration Act and thus the "Subject Deed" which inter alia provides for assignment of mining lease would not fall within the said Section is misconceived. Assuming that leasehold rights are distinct from lease, it is trite that leasehold rights constitutes interest in immovable property. The expression "*by way of*" employed in Section 22-A of Registration Act, preceding various categories/types of transfers mentioned in Section 22 A (1)(i) of Registration Act, reflects that the enumeration is not exhaustive but illustrative. The expression "*by way of*" has been attributed in "Words and Phrases" with the following meaning:

> *"'by way of' is idiomatic, and perhaps may be difficult of rendition into exact phraseology, but may be taken to mean 'as for the purpose of', 'in character of', 'as being', and was so intended to be construed in an act providing that certain companies should pay an amount tax, for the use of the State, 'by way of' a licence for their corporate franchise."*

The above expression was approved and quoted by the Supreme Court in the case of *RBF Rig Corporation v. Asst. CIT* [5]. Having found the enumeration of various types/categories of transaction are only illustrative, it appears to me that any insrument which relates to transfer of immovable property belonging to State Government in any form would be covered by Section 22-A of Registration Act. Any construction to the contrary by giving it a narrow meaning would defeat and frustrate the object of introducing Section 22-A, which is to act as a deterrent against illegal usurpation/usage of lands belonging to the State Government.

9. Previous consent of State Government for assignment of mining lease – consequences of failure to comply:

9.1. It was submitted by the Learned Additional Advocate General that any assignment of mining lease without previous consent of the State is impermissible, would thus attract Section 22-A and Section 22-B of Registration Act. I shall now examine if the above contention urged has merit.

9.2. Keeping in view the mandate and scope of Section 22-A of Registration Act discussed supra, question arises as to whether assignment of leasehold rights (mining lease) by BSCL (lessee), previous

5 2007 SCC OnLine ITAT 140

consent in writing of the State Government is mandatory and in the event of non-compliance, would attract Section 22-A of Registration Act.

9.3. To answer the above question, it may be relevant rather necessary to take a look at the following provisions:

i) Section 12 A of the Mines and Minerals (Development and Regulation) Act,1957:

> *"12A. Transfer of mineral concessions.-*
>
> *(1) The provisions of this section shall not apply to minerals specified in Part A or Part B of the First Schedule.*
>
> *(2) A holder of a mining lease or a prospecting licence-cum-mining lease granted in accordance with the procedure laid down in section 10B or section 11 may, with the previous approval of the State Government, transfer his mining lease or prospecting licence-cum-mining lease, as the case may be, in such manner as may be prescribed by the Central Government, to any person eligible to hold such mining lease or prospecting licence-cum-mining lease in accordance with the provisions of this Act and the rules made thereunder.*
>
> *(3) If the State Government does not convey its previous approval for transfer of such mining lease or prospecting licence-cum-mining lease, as the case may be, within a period of ninety days from the date of receiving such notice, it shall be construed that the State Government has no objection to such transfer:*

Provided that the holder of the original mining lease or prospecting licence-cum-mining lease shall intimate to the State Government the consideration payable by the successor-in-interest for the transfer, including the consideration in respect of the prospecting operations already undertaken and the reports and data generated during the operations.

(4) No such transfer of a mining lease or prospecting licence-cum-mining lease, referred to in sub-section (2), shall take place if the State Government, within the notice period and for reasons to be communicated in writing, disapproves the transfer on the ground that the transferee is not eligible as per the provisions of this Act:

Provided that no such transfer of a mining lease or of a prospecting licence-cum-mining lease, shall be made in contravention of any condition subject to which the mining lease or the prospecting licence cum-mining lease was granted.

(5) All transfers effected under this section shall be subject to the condition that the transferee has accepted all the conditions and liabilities under any law for the time being in force which the transferor was subject to in respect of such a mining lease or prospecting licence-cum-mining lease, as the case may be.

(6) The transfer of mineral concessions shall be allowed only for concessions which are granted through auction.

Provided that where a mining lease has been granted otherwise than through auction and where mineral from such mining lease is being used for captive purpose, such mining lease may be permitted to be transferred subject to compliance of such terms and conditions and payment of such amount or transfer charges as may be prescribed.

Explanation.-For the purposes of this proviso, the expression "used for captive purpose" shall mean the use of the entire quantity of mineral extracted from the mining lease in a manufacturing unit owned by the lessee."

(emphasis supplied)

ii) Rule 37(1) of the Mineral Concession Rules, 1960:

"The lessee shall not, without the previous consent in writing of the State Government... (a) assign, sublet, mortgage, or in any other manner, transfer the mining lease, or any right, title or interest therein."

(emphasis supplied)

iii) Clause 17 of the lease deed in Document No.3680/1980:

"*(1) The lessee/lessees shall not, without the previous consent in writing of the State Government a) assign, sublet, mortgage, or in any other manner, transfer the mining lease, or any right, title or interest therein, or b) enter into or make any arrangement, contractor understanding whereby the lessee/ lessees will or may be directly or indirectly financed to a substantial extent, by or under which the lessee's operation or undertaking will or may be substantially*

controlled by, any person or body of persons other than lessee/ lessees."

(emphasis supplied)

iv) Section 19 of the Mines and Minerals (Development and Regulation) Act, 1957:

> *"19. Prospecting licences and mining leases to be void if in contravention of Act.-Any reconnaissance permit, prospecting licence or mining lease granted, renewed or acquired in contravention of the provisions of this Act or any rules or orders made thereunder shall be void and of no effect.*
>
> *Explanation.-Where a person has acquired more than one reconnaissance permit, prospecting licence or mining lease and the aggregate area covered by such permits, licences or leases, as the case may be, exceeds the maximum area permissible under section 6, only that reconnaissance permit, prospecting licence or mining lease the acquisition of which has resulted in such maximum area being exceeded shall be deemed to be void ."*

(emphasis supplied)

10. A cumulative/conjoint reading of the above provisions, Rules and the lease deed would show that any assignment of mining lease or any right / title/ interest in such mining lease, ought to be made with

"previous consent in writing", of the State Government. It is trite that whenever "*prior consent or approval*" is mandated, power ought to be exercised only after such approval and exercise of power without such approval would vitiate the entire exercise. The expression 'previous approval' do not contemplate subsequent ratification. In this regard, it may be relevant to refer to following judgments of the Hon'ble Supreme Court:

i) *State of Rajasthan & Ors v. Gotan Lime Stone Khanji Udyog Pvt. Ltd. & Anr., (2016) 4 SCC 469:*

"22.Mining rights belong to the State and not to the lessee and the lessee has no right to profiteer by trading such rights. In the present case, the lessee has achieved indirectly what could not be achieved directly by concealing the real nature of the transaction.

...

32. The rules prohibit transfer of mining lease for consideration without the previous consent of competent authority in writing. Requirement of previous consent cannot be ignored nor taken to be formality subject only to pay dead rent or agreeing to follow same terms.

33. The lessee privately and unauthorisedly cannot sell its rights for consideration and profiteer from rights which belong to State. There is no warrant for any contrary assumption. The State has to exercise its power of granting or refusing permission for transfer of lease in a fair and

reasonable manner but following doctrine of public trust.

34. *Thus, acquisition of mining lease contrary to the Rules is void. Requirement of previous consent cannot be ignored nor taken to be formality subject only to pay dead rent or agreeing to follow same terms. The lessee privately and unauthorisedly cannot sell its rights for consideration and profiteer from rights which belong to State. There is no warrant for any contrary assumption. The State has to exercise its power of granting or refusing permission for transfer of lease in a fair and reasonable manner but following doctrine of public trust. This Court has held that the State cannot overlook illegal transfers. [Goa Foundation v. Union of India, (2014) 6 SCC 590, p. 623, para 60]*

35. *The State must have a declared policy for exercise of its power of permitting or refusing transfer of mining leases and such policy should be operated in a transparent manner. However, even in absence of a policy and irrespective of exercise of power in the past, transfer of lease for private benefit without corresponding benefit to the public or the State exchequer is not permitted. After all, minerals vest in the State and the State has to exercise its power to deal with them as per doctrine of public trust. Thus, in the present case, the State was certainly entitled to exercise its jurisdiction to cancel lease transferred in violation of the Rules."*

(emphasis supplied)

(ii) *Anirudhsinhji vs. Karansinhji Jadeja, 1995 (5)SCC 302*:

> ***"8.*** *In the instant case, a specific point has been taken in the special leave petition that prior approval, as required by Section 20-A(1) of TADA, was not taken. This section was introduced to safeguard the citizens from vexatious prosecution under TADA. The Designated Court had failed to appreciate that the DSP had not given prior approval and the case of the appellants under TADA was, therefore, non est."*
>
> (emphasis supplied)

(iii) In *P.Ramanatha Aiyar's Advanced Law Lexicon (Volume III)*, the words "*previous*", "*prior*", "*previous approval*" and "*previous sanction*" are defined as under:

> *(a) Previous' and 'prior': 'Previous' and 'prior' have been taken to be inter-changeable. Previous means prior and prior means previous*[6].
>
> *(b) The words 'previous approval' do not contemplate subsequent ratification.*[7]
>
> *(c) The term 'previous sanction' under Section 93 of the Code means that the local Government must have given its previous sanction to each particular suit. A general sanction is*

6 Kamlesh Kumari v. State of Punjab Through Secy. Dept. of Education, (1998-1) 118 PLR 433 at 438). [Punjab privately managed Recognised Schools Employees (Society of Service) Act, 1979, S. 4

7 Krishna Murari Lal Sehgal v. State of Punjab, (1977) 2 S.C.C. 587; Succession Act (39 of 1925), S. 115(7).

not sufficient.[8]

10.1. The Rules prohibit transfer of mining lease without previous consent of competent authority in writing, any such transfer shall be void, thereby attracting the embargo under Section 22- A of Registration Act. Thus the registering officer is under an obligation to refuse registration of assignment of mining lease in the absence of previous consent in writing of State Government .

11. Absence of previous consent – Effect - Under Section 22-B of Registration Act:

11.1. While on relevance and effect of absence of "*previous consent in writing of State Government"* for assigning mining lease under Registration Act, it may also attract Section 22-B of Registration Act and it is thus necessary to examine Section 22-B, which reads as under:

> *"22-B. Refusal to register forged documents and other documents prohibited by law.— Notwithstanding anything contained in this Act, the registering officer shall refuse to register the following documents, namely:—*
>
> *(1) forged document;*
>
> *(2) document relating to transaction, which is prohibited by any Central Act or State Act for the time being in force;*

8 [Swami Satyanada Brahmachari v. Phani Lal Mookerjee, 58 Cal WN 861 (DB)] [CPC (5 of 1908), S. 93

(3) ...

(4) ...”

A reading of the above provision would show that registering officer shall refuse registration of any document relating to a transaction prohibited by law. On an analysis of Section 12A, 19 of MMDR Act and Rule 37 of "1960 Rules", it appears that mining lease shall not be assigned “without prior consent in writing of State Government”, and any assignment of mining lease without prior consent of State Government would be void thus prohibited, thereby attracting Section 22B of Registration Act.

11.2. To appreciate the significance of “previous consent in writing of State Government” for assignment of mining lease as mandated under MMDR Act and “1960 Rules”, I would think that it is necessary to appreciate the role of the States in regulating mines and minerals and its impact under the Constitution.

11.3. It is trite that State holds all natural resources, including minerals, as a trustee of the public and must deal with them in a manner consistent with the nature of such a trust. The public trust doctrine looks beyond the needs of the present generation and obligates the State to

protect natural resources for future generations as well. It may be relevant to refer to the Constitution Bench decision in *Mineral Area Development Authority v. SAIL*[9], to understand the duty/obligation of State with regard to natural resources including minerals and the capacity in which it holds the same. Relevant portion is extracted hereunder:

> *"59. The public trust doctrine is founded on the principle that certain resources are nature's bounty which ought to be reserved for the whole populace, for the present and for the future. [Joseph L. Sax, "The Public Trust Doctrine in Natural Resource Law : Effective Judicial Intervention", (1970) Michigan Law Review 471, 484.] Since these resources are intrinsically important to every person in society, the State Acts as a public trustee to safeguard them. In M.C. Mehta v. Kamal Nath [M.C. Mehta v. Kamal Nath, (1997) 1 SCC 388, para 34] , Kuldip Singh, J. observed that the State is the trustee of all natural resources which are by nature meant for public use and enjoyment. The learned Judge further observed that the State has a legal duty to protect natural resources which cannot be converted into private ownership. [M.C. Mehta v. Kamal Nath, (1997) 1 SCC 388, para 34] The environment and natural resources are national assets and subject to intergenerational equity. [M.C. Mehta v. Union of India, (2009) 6 SCC 142, para 45] The public trust doctrine looks beyond the needs of the present generation and obligates the State to protect natural resources for future generations as well. [T.N. Godavarman Thirumulpad v. Union of India, (2006) 1 SCC 1, para 89]*

9 (2024) 10 SCC 1

60. *While dealing with the allocation of spectrum in CPIL v. Union of India [CPIL v. Union of India, (2012) 3 SCC 1] , this Court held that the State should distribute natural resources in consonance with the principles of equality and public trust to ensure against action detrimental to public interest. The public trust doctrine imposes restrictions and obligations on the Government to protect long-established public rights over short-term private rights and private gain. [Fomento Resorts & Hotels Ltd. v. Minguel Martins, (2009) 3 SCC 571, para 55 : (2009) 1 SCC (Civ) 877] However, the obligation extends to every person who exercises rights over natural resources to use them without impairing or diminishing the rights of people and long-term interests in that property or resource. [Fomento Resorts & Hotels Ltd. v. Minguel Martins, (2009) 3 SCC 571, para 55 : (2009) 1 SCC (Civ) 877] In Reliance Natural Resources Ltd. v. Reliance Industries Ltd. [Reliance Natural Resources Ltd. v. Reliance Industries Ltd., (2010) 7 SCC 1, para 114] , in the context of Article 297 [Constitution of India, Article 297] of the Constitution, this Court held that the nature of the word "vest" must be seen in the context of the public trust doctrine. [Reliance Natural Resources case, (2010) 7 SCC 1, para 122]*

61. *The principle which emanates from the above discussion is that the State holds all natural resources, including minerals, as a trustee of the public and must deal with them in a manner consistent with the nature of such a trust. [Natural Resources Allocation, In re, Special Reference No. 1 of 2012, (2012) 10 SCC 1, para 88]*

62. *The Central Government or the State Government may not always be the "owner" of the underlying minerals. But the Constitution empowers both Parliament (under List I Entry 54) and the State Legislatures (under List II Entry 23) to regulate mines and mineral development, the entrustment to the State being subject to the power of Parliament to regulate the domain. The Constitution has entrusted the Union and the States with the responsibility to regulate mines and mineral development in consonance with the principles of the public trust doctrine and sustainable development of mineral resources. Under the MMDR Act, the Central Government, acting as a public trustee of minerals, regulates prospecting and mining operations in public interest. [State of Rajasthan v. Gotan Lime Stone Khanji Udyog (P) Ltd., (2016) 4 SCC 469, para 29; Orissa Mining Corpn. Ltd. v. Union of India, (2013) 6 SCC 476, para 58] In the process, the legislation seeks to increase awareness of the compelling need to restore the serious ecological imbalance and protect against damage being caused to the nature. [State (NCT of Delhi) v. Sanjay, (2014) 9 SCC 772, para 32 : (2014) 5 SCC (Cri) 437]*

63. In Pradeep S. Wodeyar v. State of Karnataka [Pradeep S. Wodeyar v. State of Karnataka, (2021) 19 SCC 62, para 49.3] , one of us (D.Y. Chandrachud, J.) observed that the essence of the MMDR Act is to "protect humankind and every species whose existence depends on natural resources from the destruction which is caused by

rapacious and unregulated mining". The Court noted that the restrictions under Section 4 of the MMDR Act are intrinsically meant to protect the environment and communities who depend on the environment.

64. The principle that the Union and State Governments act as public trustees of mineral resources has been incorporated in the MMDR Act. Section 4-A empowers the Central Government to prematurely terminate a prospecting licence, exploration licence, or mining lease, after consultation with the State Government in the interests of:

(i) the regulation of mines and mineral development;

(ii) preservation of the natural environment;

(iii) control of floods;

(iv) prevention of pollution;

(v) avoiding danger to public health or communications;

(vi) ensuring the safety of buildings, monuments or other structures;

(vii) conservation of mineral resources; and

(viii) maintaining safety in the mines or for such other purposes.

[See State of Haryana v. Ram Kishan, (1988) 3 SCC 416, para 7. This Court observed that Section 4-A : (SCC p. 420, para 7)"7. ... was enacted with a view to improve the efficiency in this regard and with this view directs consultation between the Central Government and the State Government. The two Governments have to consider whether premature

termination of a particular mining lease shall advance the object or not, and must, therefore, take into account all considerations relevant to the issue, with reference to the lease in question."]

Moreover, the MMDR Act now mandates grant of mining leases, [MMDR Act, Section 10-B] exploration licences, [MMDR Act, Section 10-BA] and composite licences [MMDR Act, Section 11] in respect of notified minerals through the process of auction. The Central Government is empowered to prescribe the terms and conditions subject to which the auction shall be conducted.

65. The regulatory regime under the MMDR Act recognises the important role of the State in regulating mines and mineral development. This emerges from the standpoint of the following perspectives:

(i) the State is a public trustee of natural resources, including minerals;

(ii) pursuant to its role as a public trustee, the State has been empowered to regulate prospecting and mining operations;

(iii) the provisions of the statute reflect the priority of the State to regulate mining and related activities to ensure sustainable mineral development;

(iv) prospecting and mining operations may be carried out by both the government as well as private lessees bearing in mind the public interest; and

(v) the Government has to ensure that mineral concessions are granted in a fair and transparent manner."

(emphasis supplied)

11.4. Having encapsulated the broad drift of the constitutional and statutory provisions, status of mining rights and the role of the State in regulating and distribution of natural resources including minerals, which I had alluded to only to show that minerals are national assets and ought to be reserved for the whole populace, for the present and for the future. Any transfer or assignment of any right relating to mining lease ought to be strictly in conformity with the statutory mandate contained in MMDR Act and “1960 Rules”. Any non-compliance with a mandate of the above provisions under MMDR Act and "1960 Rules", would attract with great vigour the wrath of Section 22-B of Registration Act. This would be clear if we bear in mind that the above legislations regulating mining are also designed to further the Directive Principles contained in Part IV of the Constitution including Article 39(b), which provides that ownership and control of material resources of the community are distributed as best to sub-serve common good.

11.5. Any transfer /assignment of rights relating to mining lease in contravention of the provisions under MMDR Act, "1960 Rules" and the clause in the lease agreement may also fall foul of Section 23 of Indian Contract Act, which provides for certain considerations as unlawful

which *inter alia* includes (i) Objects and Considerations forbidden by law; or (ii) is of such a nature that if permitted, it would defeat the provisions of any law or (iii) opposed to Public Policy.

11.6. Impugned order is made without making any enquiry much less render any finding on the above aspects including on the aspect of whether the transfer/assignment of mining lease by BSCL in favour of Petitioner was made with the previous consent in writing of the State Government, which is a condition precedent for such transfer and in its absence may attract the embargo against registration under Section 22A and 22B of Registration Act. The impugned order thus stands vitiated for failing to make relevant enquiry/ taking into account relevant factors.

12. Scheme sanctioned by BIFR – To be understood as being in consonance with law:

12.1. The submission of the petitioner that "Subject Deed" is part of a Scheme sanctioned by BIFR in terms of SICA Act towards rehabilitation of sick industries; thus cannot be questioned even on the ground of being in contravention to the provisions of the MMDR Act,

Rules and lease agreement entered pursuant thereto, has not been executed.

12.2. It may relevant to refer to the following clauses of the Scheme dated 06.08.2020 sanctioned by BIFR, which reads as under:

> *vi) BSCL is permitted to approach BIFR for seeking various exemptions/concessions from Government of West Bengal relating to the waiver of the dues to various agencies as indicated at Annexure and from Government of Madhya Pradesh relating to Municipal tax of Jabalpur Municipality and sales tax dues of closed units.*
>
> *vii) Refractory unit at Salem (with all assets and liabilities) will be transferred to Steal Authority of India Ltd (SAIL) under Ministry of Steel (MoS). Department of Heavy Industry (DHI) and MoS will work value in BSCL's books of account against accumulated losses being written off, etc. in consultation with Ministry of Corporate Affairs.*

12.3. I would think that above submission of the petitioner may have to be rejected for two reasons:

(i) Firstly, Scheme does not expressly exempt the requirement of pre-condition of "previous consent in writing of State Government", a statutory mandate for assignment of mining lease. I would think that assignment of mining lease, ought to be made with the prior consent of the State Government as mandated under the provisions of MMDR Act

and Rules. Any assignment of mining lease in contravention of the above provisions and Rules would render the contract void in terms of Sections 12A and 19 of the Mines and Minerals (Development and Regulation) Act, 1957, Rule 37(1) of "1960 Rules" and Clause 17 of the lease deed in Document No.3680/1980 apart from rendering it vulnerable to challenge as being contrary to public policy and prohibited transaction in terms of Section 23 of the Contract Act. Embargo under Section 23 of Contract Act cannot be circumvented on the basis of a scheme sanctioned by BIFR.

12.3.1. Now whether it is appropriate rather permissible for one to understand a sanction by BIFR to a scheme as a license/permission to act in contravention of law, moreso a law, wherein, the State acts a regulator in its capacity as a Trustee of natural resources including minerals. I would think the answer is got to be negative.

(ii) Secondly, it may be necessary to bear in mind that it is trite that no judgment of a Court must be understood as being contrary to law. Effort must be made to ensure that judgments are in consonance with law. In this regard, it may be relevant to refer to the following judgments:

i) State Fishery Officers' Assn. v. State of W.B., (1997) 9 SCC 65 :

"2. *In view of the above finding and in view of the policy decision taken by the Government, it cannot be said that the decision of the Government is arbitrary. No direction can be given to the Government to grant the monetary benefits contrary to its policy which falls within the realm of the executive policy decision."*

(emphasis supplied)

ii) Common Cause v. Union of India, (1999) 6 SCC 667 :

"40. *..... The exercise of constitutional powers by the High Court and the Supreme Court under Articles 226 and 32 has been categorised as power of "judicial review". Every executive or administrative action of the State or other statutory or public bodies is open to judicial scrutiny and the High Court or the Supreme Court can, in exercise of the power of judicial review under the Constitution, quash the executive action or decision which is contrary to law or is violative of fundamental rights guaranteed by the Constitution. With the expanding horizon of Article 14 read with other articles dealing with fundamental rights, every executive action of the Government or other public bodies, including instrumentalities of the Government, or those which can be*

legally treated as "Authority" within the meaning of Article 12, if arbitrary, unreasonable or contrary to law, is now amenable to the writ jurisdiction of this Court under Article 32 or the High Courts under Article 226 and can be validly scrutinised on the touchstone of the constitutional mandates."

(emphasis supplied)

iii) Modern School v. Union of India, (2004) 5 SCC 583 :

"64. *..... It must further be borne in mind that by reason of judicial direction this Court cannot override a statute or statutory rules governing the field and, thus, no direction can be issued by this Court contrary thereto or inconsistent therewith.*

66. *This Court, when such legislations are operating in the field should be loathe to impose any further restrictions. This Court normally does not pass an order even in exercise of its jurisdiction under Article 142 of the Constitution of India which would be contrary to the law. [See Govt. of W.B. v. Tarun K. Roy [(2004) 1 SCC 347 : 2004 SCC (L&S) 225 : (2003) 9 Scale 671] (Scale paras 32 to 34 : SCC paras 31 to 33) and Jamshed Hormusji Wadia v. Board of Trustees, Port of Mumbai [(2004) 3 SCC 214]"*

(emphasis supplied)

iv) <u>Destruction of Public & Private Properties v. State of A.P., (2009) 5 SCC 212 :</u>

"17. *The power of this Court also extends to laying down guidelines. In Union of India v. Assn. for Democratic Reforms [(2002) 5 SCC 294] this Court observed : (SCC p. 309, paras 19-20)*

"19. ... It is also established law that no direction can be given, which would be contrary to the Act and the Rules."

v) Karnataka SRTC v. Ashrafulla Khan, (2002) 2 SCC 560 :

"27.....*<u>The High Court under Article 226 of the Constitution is required to enforce rule of law and not pass an order or direction which is contrary to what has been injuncted by law."</u>*

(emphasis supplied)

vi) Maharshi Dayanand University v. Surjeet Kaur, (2010) 11 SCC 159 :

"11. *It is settled legal proposition that neither the court nor any tribunal has the competence to issue a direction contrary to law and to act in contravention of a statutory provision. The Court has no competence to issue a direction contrary to law nor the court can direct an authority to act in contravention of the statutory provisions.*

12. *In State of Punjab v. Renuka Singla [(1994) 1 SCC 175] , dealing with a similar situation, this Court observed as under : (SCC p. 178, para 8)*

"8. ... We fail to appreciate as to how the High Court or this Court can be generous or liberal in issuing such directions which in substance amount to directing the authorities concerned to violate their own statutory rules and regulations...."

13. *Similarly, in Karnataka SRTC v. Ashrafulla Khan [(2002) 2 SCC 560 : AIR 2002 SC 629] , this Court held as under : (SCC pp. 572-73, para 27)*

"27. ... The High Court under Article 226 of the Constitution is required to enforce rule of law and not pass order or direction which is contrary to what has been injuncted by law."

Similar view has been reiterated by this Court in Manish Goel v. Rohini Goel [(2010) 4 SCC 393 : (2010) 2 SCC (Civ) 162 : AIR 2010 SC 1099]"

12.4. Keeping the above position of law, it appears that it may not be permissible to understand BIFR, to approve any Scheme contrary to provisions of MMDR Act and "1960 Rules". Moreso in the absence of any express exemption under the Scheme sanctioned by BIFR from the mandate of "previous consent in writing of State Government" in terms of MMDR Act and "1960 Rules". Any attempt to understand the sanction by BIFR as a shield or a device to circumvent the statutory mandate ought to be avoided rather impermissible.

13. Acceptance of dead rent/royalty by State – indicative of assent by State to enter/renew lease:

13.1. The learned Additional Solicitor General attempted to submit that the State had accepted dead rent from the petitioner and the above conduct must be understood as manifestation of the State's intent to grant/renew/consent to assignment of mining lease in favour of the petitioner by BSCL. It is trite that payment and acceptance of rent would not necessarily reflect the lessor's assent i.e. State in the present case, to lease or assign leasehold rights (in the instant case, mining lease). In this regard, it may be relevant to refer to the following judgments:

a) *Sardarilal Vishwanath v. Pritam Singh, (1978) 4 SCC 1:*

> *"3. ...Something more than mere payment and acceptance of rent would be necessary to assert that the lessor has assented to the lessee continuing in possession and the lessor intended the renewal of the lease. Except for the acceptance of rent after the lease determined by efflux of time, nothing was pointed out to us to show that the lessor had otherwise assented to the lessee continuing in possession so as to infer the renewal of lease. Therefore, the lessee in this case is indisputably a statutory tenant and cannot seek any assistance from the provisions contained in Section 116 of the Transfer of Property Act."*

(b) *Harbhajan Singh v. State of Punjab, (2020) 2 SCC 659:*

"14. ...In other words, payment of rent would not be a determinative and relevant factor in deciding the issue and question of "unauthorised occupation". The tenure of allotment, lease or the grant and terms and conditions as agreed or stated, and not mere payment of rent would be the crucial and determinative criterion."

c)*Urmese J. Valooran v. Padma, 2014 SCC OnLine Ker 28460:*

"15. ...Mere payment of rent as occupational charges will not create a lease by implying that there is an exclusive transfer of interest, (possession)."

d) *Sri. Tarkeshwar Sio Thakur Jiu v. Dar Dass Dey & Co., (1979) 3 SCC 106 :*

"37. A right to carry on mining operations in land to extract a specified mineral and to remove and appropriate that mineral, is a "right to enjoy immovable property" within the meaning of Section 105."

It is thus evident and clear that the above contention of the petitioner is devoid of merit.

14. Before parting, it must be clarified that while this Court is

conscious that it is trite that an order of public authority cannot be improved.[10] However, it is to be remembered that the High Court while exercising its power under Article 226 is the "sentinel on the qui vive" and ensure that the constitutional values/scheme including Directive Principles is attained/achieved and not distorted or frustrated.[11] This Court had examined the above aspects, for if the Court does not perform its constitutional duty as a sentinel on the qui vive, in the facts of the case, it may result in mineral resources which are national assets and subject to intergenerational equity being imperilled. It is in that view of the matter that this Court is inclined to remand the matter back to reconsider the entire issue keeping in the view the above observations.

15. For the above reasons, the impugned order dated 21.04.2025 is set aside and the respondent authority is directed to pass order afresh keeping in view the above discussion and after making all relevant enquiry including but not limited to the following:

a) Whether previous consent in writing of the State Government has been obtained for assignment of mining lease by BSCL?

10 Mohinder Singh Gill v. Chief Election Commissioner, (1978) 1 SCC 405
11 K.S. Puttaswamy (Privacy-9J.) v. Union of India, (2017) 10 SCC 1
I.R. Coelho Vs. State of Tamil Nadu, (2007) 2 SCC 1

b) If previous consent in writing is not obtained from the State Government, whether Section 22-A and 22-B of Registration Act would get attracted?

16. Accordingly, the Writ Petition stands disposed of. There shall be no order as to costs. Consequently, connected miscellaneous petitions are closed.

09.01.2026

Speaking (or) Non Speaking Order
Index:Yes/No
Neutral Citation: Yes/No
mka/Lm

To:

1.The Sub-Registrar, Salem West,
Sooramangalam, Salem.

2.The District Registrar, Salem West,
Sooramangalam, Salem.

3.The District Collector,
Salem, Salem District.

4.The Inspector General of Registration,
100, Santhome High Road,
Chennai-600 028.

MOHAMMED SHAFFIQ, J.

mka/Lm

Order made in
W.P. No.14249 of 2025

09.01.2026