



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIRCUIT BENCH AT KOLHAPUR
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 2031 OF 2022

- | | | |
|---------------------------------------|---|-----------------------------|
| 1) Dinanath Rajaram Ballal, Age of 56 |] | |
| Residing at House No. 15, Danoli, |] | |
| Taluka - Sawantwadi, |] | |
| District - Sindhudurg, Pin: 416510 |] | <u>...Petitioner</u> |

Versus

- | | | |
|---|---|--|
| 1) The State of Maharashtra, |] | |
| Industries and Mining Department, |] | |
| Maharashtra State, through |] | |
| Government Pleader, Bombay High Court. |] | |
| 2) The Additional Chief Secretary, |] | |
| Mining Department, |] | |
| Maharashtra State, |] | |
| Mantralay, Mumbai. |] | |
| 3) The Deputy Secretary, |] | |
| Mining Department, |] | |
| Maharashtra State, |] | |
| Mantralay, Mumbai. |] | |
| 4) Director of Geology and Mining, |] | |
| Directorate Geology and Mining, |] | |
| 27, Kahnij Bhavan, Shivaji Nagar, |] | |
| Nagpur - 440 001. |] | |
| 5) The District Mining Officer, |] | |
| District Collector Officer, |] | |
| Sindhudurg Nagari, Orus, |] | |
| District Sindhudurg. |] | |
| 6) The District Collector, |] | |
| Sindhudurg Nagari, Orus, |] | |
| District Sindhudurg. |] | |
| 7) New India Mining Corporation Pvt. Ltd., |] | |
| having address at Nirmal Central Wing, 16 th |] | |
| Floor, Nariman Point, |] | |
| Mumbai - 400 021. |] | |
| 8) Gadag Mines and Minerals Pvt. Ltd., |] | |

having address at 1507, "C",
Ford Corner, Bhopal Tower, 1st Floor, No.107,
Laxmipuri, Kolhapur-416 002.

...Respondents

**WITH
INTERIM APPLICATION NO. 17445 OF 2022
IN
WRIT PETITION NO. 2031 OF 2022**

1) M/s. Rampurush Enterprises
Through Proprietor
Mr. Govind @ Prakash Kamat
Age 67 Occ. Business,
R/o. Kanyalwadi, Village Redi,
Tal. Vengurla, Dist Sindhudurga

...Intervener

IN THE MATTER BETWEEN

1) Dinanath Rajaram Ballal, Age of 56
Residing at House No. 15, Danoli,
Taluka - Sawantwadi,
District - Sindhudurg, Pin: 416510

...Petitioner

Versus

1) The State of Maharashtra,
Industries and Mining Department,
Maharashtra State, through
Government Pleader, Bombay High Court.

2) The Additional Chief Secretary,
Mining Department,
Maharashtra State,
Mantralay, Mumbai.

3) The Deputy Secretary,
Mining Department,
Maharashtra State,
Mantralay, Mumbai.

4) Director of Geology and Mining,
Directorate Geology and Mining,
27, Kahnij Bhavan, Shivaji Nagar,
Nagpur - 440 001.

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|---|---|------------------------------|
| 5) The District Mining Officer, |] | |
| District Collector Officer, |] | |
| Sindhudurg Nagari, Orus, |] | |
| District Sindhudurg. |] | |
| 6) The District Collector, |] | |
| Sindhudurg Nagari, Orus, |] | |
| District Sindhudurg. |] | |
| 7) New India Mining Corporation Pvt. Ltd., |] | |
| having address at Nirmal Central Wing, 16 th |] | |
| Floor, Nariman Point, |] | |
| Mumbai - 400 021. |] | |
| 8) Gadag Mines and Minerals Pvt. Ltd., |] | |
| having address at 1507, "C", |] | |
| Ford Corner, Bhopal Tower, 1 st Floor, No.107, |] | |
| Laxmipuri, Kolhapur-416 002. |] | <u>...Respondents</u> |

**WITH
INTERIM APPLICATION NO. 10081 OF 2022
IN
WRIT PETITION NO. 2031 OF 2022**

- | | | |
|---------------------------------------|---|-----------------------------|
| 1) Shri Laxman Ganpat Bhute, |] | |
| Age: 45 yrs., Occ.- Agri., |] | |
| R/at. Post Nagalevi, |] | |
| Taluka Vengurla, District Sindhudurg. |] | <u>...Intervener</u> |

IN THE MATTER BETWEEN

- | | | |
|---------------------------------------|---|-----------------------------|
| 1) Dinanath Rajaram Ballal, Age of 56 |] | |
| Residing at House No. 15, Danoli, |] | |
| Taluka - Sawantwadi, |] | |
| District - Sindhudurg, Pin: 416510 |] | <u>...Petitioner</u> |

Versus

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| 1) The State of Maharashtra, |] | |
| Industries and Mining Department, |] | |
| Maharashtra State, through |] | |
| Government Pleader, Bombay High Court. |] | |
| 2) The Additional Chief Secretary, |] | |
| Mining Department, |] | |

- | | | |
|---|---|------------------------------|
| Maharashtra State, |] | |
| Mantralay, Mumbai. |] | |
| 3) The Deputy Secretary, |] | |
| Mining Department, |] | |
| Maharashtra State, |] | |
| Mantralay, Mumbai. |] | |
| 4) Director of Geology and Mining, |] | |
| Directorate Geology and Mining, |] | |
| 27, Kahnij Bhavan, Shivaji Nagar, |] | |
| Nagpur - 440 001. |] | |
| 5) The District Mining Officer, |] | |
| District Collector Officer, |] | |
| Sindhudurg Nagari, Orus, |] | |
| District Sindhudurg. |] | |
| 6) The District Collector, |] | |
| Sindhudurg Nagari, Orus, |] | |
| District Sindhudurg. |] | |
| 7) New India Mining Corporation Pvt. Ltd., |] | |
| having address at Nirmal Central Wing, 16 th |] | |
| Floor, Nariman Point, |] | |
| Mumbai - 400 021. |] | |
| 8) Gadag Mines and Minerals Pvt. Ltd., |] | |
| having address at 1507, "C", |] | |
| Ford Corner, Bhopal Tower, 1 st Floor, No.107, |] | |
| Laxmipuri, Kolhapur-416 002. |] | |
| | | <u>...Respondents</u> |

**WITH
INTERIM APPLICATION NO. 2022 OF 2022
IN
WRIT PETITION NO. 2031 OF 2022**

- | | | |
|--|---|-----------------------------|
| 1) Exo Resourceminest Pvt. Ltd. |] | |
| A Company registered under Companies Act |] | |
| Through Director |] | |
| Mr. Madhusudan Dattatray Sawant |] | |
| Age 62. Occ. Business, |] | |
| Having Office at 101, Irani Building, |] | |
| Panchpakhadi Thane – 400 602 |] | |
| | | <u>...Intervener</u> |

IN THE MATTER BETWEEN

- | | | |
|---------------------------------------|---|-----------------------------|
| 1) Dinanath Rajaram Ballal, Age of 56 |] | |
| Residing at House No. 15, Danoli, |] | |
| Taluka - Sawantwadi, |] | |
| District - Sindhudurg, Pin: 416510 |] | <u>...Petitioner</u> |

Versus

- | | | |
|---|---|------------------------------|
| 1) The State of Maharashtra, |] | |
| Industries and Mining Department, |] | |
| Maharashtra State, through |] | |
| Government Pleader, Bombay High Court. |] | |
| 2) The Additional Chief Secretary, |] | |
| Mining Department, |] | |
| Maharashtra State, |] | |
| Mantralay, Mumbai. |] | |
| 3) The Deputy Secretary, |] | |
| Mining Department, |] | |
| Maharashtra State, |] | |
| Mantralay, Mumbai. |] | |
| 4) Director of Geology and Mining, |] | |
| Directorate Geology and Mining, |] | |
| 27, Kahnij Bhavan, Shivaji Nagar, |] | |
| Nagpur - 440 001. |] | |
| 5) The District Mining Officer, |] | |
| District Collector Officer, |] | |
| Sindhudurg Nagari, Orus, |] | |
| District Sindhudurg. |] | |
| 6) The District Collector, |] | |
| Sindhudurg Nagari, Orus, |] | |
| District Sindhudurg. |] | |
| 7) New India Mining Corporation Pvt. Ltd., |] | |
| having address at Nirmal Central Wing, 16 th |] | |
| Floor, Nariman Point, |] | |
| Mumbai - 400 021. |] | |
| 8) Gadag Mines and Minerals Pvt. Ltd., |] | |
| having address at 1507, "C", |] | |
| Ford Corner, Bhopal Tower, 1 st Floor, No.107, |] | |
| Laxmipuri, Kolhapur-416 002. |] | <u>...Respondents</u> |

**WITH
WRIT PETITION NO. 452 OF 2023**

- | | | |
|---|---|------------------------------|
| 1) Redi Port Limited, |] | |
| Having its registered office at |] | |
| Earnest House 10 th Floor, NCPA Marg, |] | |
| Nariman Point, Mumbai-400 021. |] | |
| 2) Earnest Shipping and Ship Builders Pvt. Ltd., |] | |
| Having its registered office at |] | |
| 107, 10 th Floor, Earnest House, 194, |] | |
| Nariman Point, Mumbai City MH-400 021. |] | |
| 3) Dr. Earnest John II, |] | |
| adult, Indian inhabitant and shareholder and |] | |
| Managing Director of Petitioner Nos. 1 and 2, |] | |
| having his office at 107, 10 th Floor, Earnest |] | |
| House, 194, Nariman Point, Mumbai City |] | |
| MH-400 021. |] | |
| | | <u>...Petitioners</u> |

Versus

- | | | |
|---|---|--|
| 1) State of Maharashtra, |] | |
| through |] | |
| (A) Forest Department, |] | |
| Government of Maharashtra. |] | |
| (B) Revenue Department, |] | |
| Government of Maharashtra. |] | |
| (C) Industries Department through the Minister |] | |
| for Mining, |] | |
| Government of Maharashtra. |] | |
| (D) Home Department, |] | |
| Government of Maharashtra, |] | |
| All having their address at Mantralaya, |] | |
| Mumbai 400032, Maharashtra. |] | |
| (E) Principal Chief Conservator of Forests |] | |
| (Head of Forests Force), |] | |
| Having its office at M.S. Nagpur, 3 rd |] | |
| Floor, Van Bhavan, Ramgiri Road, |] | |
| Civil Lines, Nagpur 440 001, |] | |
| Maharashtra. |] | |
| (F) Deputy Conservator of Forests, |] | |

- Forest Department,]
 Having its office at Sawantwadi, Van]
 Bhavan, Salaiwada, Sawantwadi,]
 Sindhudurg 416510, Maharashtra.]
- (G) District Collector,]
 Having its office at Sindhudurg, 1st Floor,]
 District Collector Office,]
 Sindhudurg 416812, Maharashtra.]
- (H) Divisional Commissioner,]
 Konkan Division,]
 Having its office at]
 Konkan Bhavan, CBD Belapur,]
 Navi Mumbai 400614, Maharashtra.]
- (I) Directorate of Geology and Mining, Nagpur,]
 through its Director, having its office]
 at 27, Kahnij Bhavan, Shivaji Nagar,]
 Nagpur 440010, Maharashtra.]
- 2) Union of India,]
 through Ministry of Environment, Forests,]
 and Climate Change, Integrated Regional]
 Office, Having its office at Ground Floor, East]
 Wing, New Secretariat Building, Civil Lines,]
 Nagpur 440001, Maharashtra.]
- 3) Maharashtra Maritime Board,]
 Having its office at 14, R. Kamani Road,]
 Ballard Estate, Fort, Mumbai 400001,]
 Maharashtra.]
- 4) New India Mining Corporation Pvt. Ltd.,]
 Having its office at Nirmal Central Wing, 16th]
 Floor, Nariman Point, Mumbai 400021,]
 Maharashtra.]
- 5) Gadag Mines and Minerals Pvt. Ltd.,]

Having its office at 1507, C Ford Corner,
Bhopal Tower, 1st Floor, No. 107, Laxmipuri,
Kolhapur 416002, Maharashtra.

- 6) Mr. Dinanath Rajaram Ballal,
adult, Indian inhabitant, having his office at
House No. 15, Danoli, Sawantwadi,
Sindhudurg 416510, Maharashtra

...Respondents

Mr. Arif Bookwala Sr. Adv. a/w Adv. S.V.Sonawane i/b Adv. Satish Muley and Adv. Mosin Naik, for the Petitioner in WP/2031/2022, for the Respondent No.6 in WP/452/2023.

Mr. Darius J Khambata Sr. Counsel a/w Mr. Ashish Kamat, Sr.Adv., Ms. Aakanksha Saxena, Ms. Nishtha Gupta, Mr. Murtuza Federal, Adv. Rashne Mulla-Feroze, Adv. Dinkar Desai, Mr. Nikhil Jalan, Ms. Ashna Modi i/b Federal and company, for the Petitioner in WP/452/2023.

Mr. Kapil Sibal Sr.Adv. a/w Adv. Manisha Pranjal, Adv. Aniesh Jadhav, Adv. Apoorva Kaushik, Adv. Yash Kataria i/b Khaitan and Co., for the Respondent No.4 in WP/452/2023.

Mr. A.I.Patel, Addl.GP a/w Mr. R.P.Kadam, "B" Panel counsel, for the Respondent-State.

Mr. Madan, Senior Advocate for Respondent No 3 in W.P No 452 of 2023.

Mr. Praveen Samdani Sr. Adv. a/w Adv. Akshit Dedhia, Adv. Nisha A Waghmare i/b Vardhaman Juris, for the Respondent No. 8 in WP/2031/2022 and for the Respondent No. 5 in WP/452/2023.

Adv. Aniesh S Jadhav a/w Adv. Yash Kataria i/b Khaitan and co., for Respondent No.7-NIMCO in WP/2031/2022.

Mr. Anish Desai a/w Mr. Chetan Arvind Alai, Mr. Pranit Laxman Pawar, Mr. Rishabh N Chaurasia, for Intervenor In IA/10081/2022.

Adv. Ishwar Nankani a/w Adv. Kartik Gupta i/b Nankani and Asso., for Respondent No. 3 In WP/452/2023.

**CORAM : SHARMILA U. DESHMUKH &
NEERAJ P. DHOTE, JJ.**

RESERVED ON : SEPTEMBER 28, 2026

PRONOUNCED ON : OCTOBER 13, 2026

JUDGMENT : (Per Sharmila U. Deshmukh J)

1. **Rule.** Rule made returnable forthwith and taken up for final hearing with consent.
2. Under Article 48-A contained in Part IV of Constitution of India, it is the obligation of the State to protect and improve the environment and to safeguard the forests. The disregard of the Directive Principles of State Policy compels the Courts time and again to step in and ensure protection and preservation of natural environment. The orders impugned in the present Petitions are passed under Section 48 of the Maharashtra Land Revenue Code, 1966 by the State Government in a perfunctory manner losing sight of the significant aspect that the permissions granted by the impugned orders concerns removal of dumps situated on forest land admeasuring about 33.78 hectares of forest land requiring prior approval of Central Government compelling this Court to exercise its extraordinary writ jurisdiction despite stiff opposition on myriad grounds.

THE CHALLENGE:

3. This group of Petitions challenges *inter alia* the orders passed by the Hon'ble Minister for Mining in respect of Survey No. 15 and 58 granting permission for lifting of iron ore dumps. Writ Petition No. 452 of 2023 also seeks issuance of mandamus directing the Revenue and Forest Department to allot the subject land i.e. Survey No 15 and 58 by issuing order of diversion in favor of Respondent No. 3, Maharashtra

Maritime Board ("**MMB**"), which will further divert the land to Petitioner No. 1 in compliance with the letter dated 26th February, 2021 addressed by Respondent No. 2, Union of India, through the Ministry of Environment, Forest and Climate Change ("**MOEFCC**"), read with the addendum dated 8th March, 2021.

4. For sake of convenience, Petitioner in Writ Petition No 2031 of 2022 is referred to as "**Dinanath Ballal**" Petitioners in Writ Petition No 452 of 2023 is referred to as "**Redi Port Ltd**". The Respondent No 7 in Writ Petition No 2031 of 2022, who is also Respondent No 4 in Writ Petition no 452 of 2023 is referred to as "**NIMCO**" and Respondent No 8 in Writ Petition No 2031 of 2022, who is Respondent No 5 in Writ Petition No 452 of 2023 is referred to as "**Gadag Mines**"

PLEADINGS:

5. Briefly stated Dinanath Ballal's case is of filing of application on 12th March, 2010 for permission to lift the dumps in respect of Survey No 58 Village Kanyal. In or around 1974, Survey No. 58 viz the dump land was newly created by the dump material thrown by the mining company on the bed of sea to the south-east of Redi Port without the permission of District Collector having lease to operate mines in the adjoining areas. Dinanath Ballal's application was forwarded by Director of Geology and Mining, Nagpur (for short "**DGM**") to the State

Government. By letter dated 26th May, 2010 DGM informed the State Government, stated that the subject would require prior permission of Forest Department and Central Ministry of Environment and Forest. By letter dated 15th February, 2011, the Deputy Forest Conservator informed the District Collector that the said land is wrongly notified as forest, and the land be de-notified and restored back to its original position. DGM by letter dated 7th March, 2012 by the informed the Principal Secretary (Industries, Energy and Labour Department) informed about the various applications received for lifting the dump lying in or around the village Kanyal including the application dated 23rd February, 2011 made by NIMCO for lifting the dump. There were only two applications, one of Mr. Prakash Sawant dated 10th September, 2009, and other of Dinanath Ballal dated 12th March, 2010, which were sent to the State Government for approval.

6. On 15th March, 2014, a Government Resolution (“GR”) was issued defining the new policies for removal of dumps on tendering basis and the procedure to be followed while tendering, which resulted in repealing of the order dated 13th June, 1977, and further stated that all applications received for removal of dump are transferred back to the Director, Geology and Mining, and he is delegated to dispose of all such applications at his level. On 11th April, 2014, the State Government rejected the application of Dinanath Ballal as against which Appeal was

filed before the Hon'ble Minister for Mining. Vide order dated 17th December, 2018, the Hon'ble Minister permitted Dinanath Ballal to extract the iron ore from the dump lying at Survey No. 58. Subsequently other permissions were obtained. As the District Collector, Sindhudurg was not accepting the advance royalty payment, Dinanath Ballal once again approached the Hon'ble Minister for Industries and Mining, and a reasoned order was passed on 26th August, 2019, directing Dinanath Ballal to obtain prior permission under the Forest (Conservation) Act, 1980 (for short "**Forest Act**"), CRZ and environmental permission before lifting the dumps, and also directed to deposit 10% advance royalty payment.

7. On 14th September, 2020, NIMCO raised an objection to the allotment of dump to Dinanath Ballal pursuant to which hearing was held on 19th January, 2021 before the Hon'ble Minister at the instance of NIMCO through Gadag Mines and impugned order dated 14th October, 2021 came to be passed rejecting the order dated 17th December, 2018 passed in favour of Dinanath Ballal.

8. The reply affidavit of Respondent Nos 1 to 4 supports the impugned order on the ground of review jurisdiction being exercised on discovery of new and important matter of ownership of NIMCO. It states that Civil Court has declared that NIMCO and State Government being owners of the dump bearing Survey No 58, NIMCO is entitled to remove

the dump with permission of State Government. As the declaration was only of ownership and other reliefs are rejected, whoever removes the dumps has to pay royalty and other requisite charges to the State Government and not to NIMCO. The rejoinder re-iterates the case in the Petition.

9. In Writ Petition No. 452 of 2023, Redi Port Ltd claims right under a concession agreement dated 25th February, 2009 executed by Redi Port Ltd with MMB for development of existing facility at Redi Port by expansion on Survey No 15 and 58. The dumping on sea bed and sea shore led to creation of new land aggregating 33.78 hectares on the seashore and seabed adjoining the mining sites, which vests in the State Government. On 1st January, 1994, the Talathi assigned Survey Nos. 15 and 58 to the lands created by said dumping and mutation entries were effected recording the said land as government waste/*pad*. Sometime between 1994 and 1997, the State Government issued directions to the Social Forestry Department to undertake forestation measures on Survey Nos. 15 and 58, after which, 1703 trees were planted on said Survey Nos. 15 and 58, and the name of Forest Department was entered as occupier in the 7/12 extract.

10. By resolution dated 15th March, 1996, a decision was taken for construction of several ports by the Government of Maharashtra. As there was no proper response, in meeting held on 8th January, 1998, it

was resolved that small ports would be developed by entering into a Memorandum of Understanding. MMB accepted the proposal of Redi Port Ltd submitted on 1st October, 2005 and vide letter dated 9th February, 2007 applied to the Collector for allotment of land at village Redi and Kanyal for development of Redi Port, particularly, Survey Nos. 15 and 58 admeasuring 33.78 hectares. Letter of intent was issued on 6th July, 2007 by MMB in favor of Petitioner No. 2. By GR dated 18th October, 2008 sanction was accorded by Government of Maharashtra to Petitioner No. 2 for development of all weather multi-purpose port at Redi.

11. In 2011, as there was no transfer of land to MMB, there was constant follow-up and as the land was designated as forest land, MMB was informed on 24th February, 2012 by Revenue and Forest Department to seek permission of Central Government for diversion of forest land before the land could be transferred to MMB. Accordingly, on 15th May, 2013 a proposal was submitted under Section 2 of the Forest Act to Deputy Forest Conservator. MOEFCC by letter dated 21st September, 2017 granted in principle approval under Section 2 of the Forest Act for diversion of Survey Nos. 15 and 58 in favor of MMB for development of Redi Port. On 26th March, 2019, Petitioner No. 1 made payment of Rs. 6,47,77,817.40/- to State of Maharashtra CAMPA account on behalf of MMB and also handed over 36 hectares of

alternate forest land for compulsory afforestation at an expenditure of more than Rs. 1.50 crores. CRZ and environmental clearance was granted for expansion of facilities at Redi Port to Redi Port Ltd on 6th September, 2018, and permission was obtained from MPCB on 30th November, 2018.

12. By communication dated 26th February, 2021, addressed by MOEFCC to the Principal Secretary, Revenue and Forest Department, the final approval was granted to MMB for development of Redi Port, subject to certain conditions, which included compensatory afforestation, and the addendum to the stage two was issued on 8th March, 2021. By communication dated 19th March, 2021, the Principal Chief Conservator of Forest, State of Maharashtra, Nagpur, requested the Principal Secretary (Forest) Revenue and Forest Department, to issue an order for diversion of subject land for Redi Port project by letter dated 19th March, 2021, in view of Government Circular dated 21st February, 2014, which required separate detailed order from the State Government regarding the diversion of forest land, which is not yet issued.

13. During the period between issuance of the in-principle approval and the final approval, Redi Port Ltd noticed certain mining/excavation activities being carried out on subject land bearing Survey No. 58, and accordingly, request was made to Deputy Conservator of Forest, and

District Collector to take action. Redi Port Ltd also learnt about the orders passed in favour of Dinanath Ballal and NIMCO and Gadag Mines permitting lifting of dumps as also about the decree passed in Civil Suit No. 183 of 1992 in favour of NIMCO.

14. In Writ Petition No. 452 of 2023, the reply Affidavit of MMB supports the case of Redi Port Ltd asserting about the concession agreement executed with Redi Port Ltd and that Respondent Nos. 1A, E and F were aware that the development was to be carried out by Redi Port Ltd. The affidavit further sets out permissions obtained under Section 2 of the Forest Act and that the lands are to be provided to MMB, who would then provide the same to the Petitioner No. 1 in terms of the concession agreement. The affidavit further states that the NIMCO had addressed a letter to MMB requesting permission for removal and transportation of low-grade iron ore dump in Survey No. 58, and also for preparation of roads on Survey No. 58, however, no such permission has been granted.

15. The affidavit of MOEFCC, Respondent No. 2, speaks about the approvals granted under Section 2 of the Forest Act for diversion of 33.78 hectares of the identified forest land in favor of Regional Port Officer, MMB for development of Redi Port. The affidavit further states that the complaint was received on 7th December, 2022 from Dinanath Ballal, in respect of final approval dated 26th February, 2021 passed in

favor of MMB. As the issue pertaining to the use of forest land was *sub judice*, the Ministry decided to keep the final approval in abeyance, until disposal of Writ Petition (St) No. 999 of 2023 filed by Redi Port Limited in this Court. The abeyance order issued on 28th February, 2023 was withdrawn in view of order dated 25th February, 2022 passed by this Court in Writ Petition No. 2031 of 2022, directing that as far as Survey No. 58 is concerned, the *status quo* to continue to operate. It is further stated that the Ministry has not received any proposal seeking prior approval under Section 2 of the Forest Act for removal of mining dumps in the subject land, and the stage two approval is limited to development of Redi Port in favor of MMB.

16. The Deputy Conservator of Forest, has filed reply affidavit on behalf of Respondent Nos. 1A, E and F objecting to the locus of Redi Port to file the Petition. It further states about dumping of mining rejects illegally on sea beach and seabed by NIMCO. The said dumps were assigned new Survey Nos. 15 and 58 as per order dated 21st April, 1993 of District Collector. The Social Forestry Department carried out mixed plantation of both these Survey Numbers and came to be identified as forest alike, in view of the decision of the Hon'ble Apex Court in the case of ***T.N. Godavarman Thirumulpad vs Union Of India***¹ dated 12th December, 1996. The mutation entries were effected in

¹ (1998) 6 SCC 190

respect of the said land as being government *pad* land and the name of forest department was entered as occupier of Survey Nos. 58 and 15. The lands are still in possession of the Revenue Department of Sindhudurg District. The affidavit further states about approvals granted by MOEFCC, as well as the objections raised by Dinanath Ballal in respect of the final approval granted in favor of MMB. The affidavit further states that by communication dated 5th April, 2023, the MOEFCC by taking cognizance of the order dated 25th February, 2022 has informed that the abeyance order issued on 28th February, 2023 to the final approval is withdrawn and resulting in restoration of final approval given to user agency. It is further stated that none of the Petitioners is the user agency and the approvals have been granted in favor of MMB for development of Redi Port, and thus, the user agency is MMB. It is further stated that the compensatory amount was deposited by MMB, user agency, and that the final approval letter records that afforestation measures were taken by Regional Port Officer. The affidavit denies any activity involving mining/excavation being carried out on Survey No 58 during the site visit by Forest Officer.

17. The affidavit-in-reply of Dinanath Ballal reiterates the stand taken in Writ Petition No. 2031 of 2022. It is stated that the rights of Redi Port Ltd will not be affected for development of port for the reasons that the iron ore from the dump lying at Survey No. 58 is less than 20%, and

once mining of the iron ore is extracted from the dump, the surface of land will remain undisturbed and will not demolish Survey No. 58 and 15. It is stated that the development of the port by Redi Port Ltd and mining activities by Dinanath Ballal can proceed simultaneously, which will require at least five years to extract iron ore from the dump lying at Survey No. 58.

18. In rejoinder, Redi Port Ltd states that the impugned order permitting mining operations on forest land is illegal and *ultravires* Forest Act. It sets out the approval of Redi Port Ltd as developer for development of Redi Port to support the maintainability of Petition at its instance.

SUBMISSIONS :

19. Mr. Bookwala, learned senior counsel for Dinanath Ballal would submit that under Section 48(1) of MLRC the right to minerals in old dump vests in State Government. He would point out the Government Resolution dated 13th June, 1977 by which power was derogated to DGM for grant of permission for removal of dumps and that such activities does not amount to mining operations. He submits that due permission was granted to Dinanath Ballal for removal of dumps by the order of Hon'ble Minister on 17th December, 2018 and that various permissions were obtained by Dinanath Ballal pursuant to the grant of

permission.

20. He submits that after twenty one months after passing of the order, NIMCO addressed a letter to various authorities asserting claim over the dump at Survey No 58, followed by two representations dated 24th September, 2020 and 15th October, 2020. Drawing attention of this Court to Section 258 of MLRC, he submits that review was moved after the expiry of 90 days limitation period and no application was filed for condonation of delay. He would point out clause (iv) of proviso to Section 258(1) to contend that the statutory provisions places an embargo on exercising power of review in respect of order affecting right between private persons except on application of party to proceedings and within 90 days. He has taken this Court through the provisions of Section 258 of MLRC and would submit that none of the parties to the order of 17th December, 2018 had applied for review.

21. He submits that neither NIMCO nor Gadag Mines are party to proceedings and right between private parties cannot be decided after 90 days of passing of order. He has taken this Court through the impugned order dated 14th October, 2021 in detail and would submit that the review is not exercised *suo motu* by State and the reply affidavits on record assert that the review is pursuant to the representations of NIMCO and Gadag Mines.

22. He submits that the finding of Hon'ble Minister in the impugned order about discovery of new and important fact is untenable as State was already party to the litigation adopted by NIMCO. He would submit that the contention that NIMCO or Gadag Mines was not party to the proceedings cannot assist their case as despite filing an application in 2011, no steps were taken by NIMCO to pursue the application. Pointing out to the decree of the Civil Court, he submits that in the civil suit no relief of injunction and possession was granted and the decree lapsed as it was unenforceable, being only a decree of declaration of ownership of dump. He submits that the decree of declaration in favour of NIMCO is mere paper decree and the impugned order passed solely on the basis of ownership of NIMCO is misconceived.

23. He would point out that the impugned order considers the GR dated 15th March, 2014 declaring the revised policy for dumps in supersession of the earlier policy dated 13th June, 1977, which directed auction to be conducted for granting permission for removal of the dump. He submits that the policy which would govern is the policy existing at the time of filing of application by Dinanath Ballal in the year 2010, which would be the policy of 13th June, 1977.

24. He has further taken this Court through the judgment of the Civil Court as well as the Appellate Court in order to contend that only a declaration of the ownership of the dumped material was granted by

the Civil Court, and the suit for injunction and possession was dismissed. He would further point out that the Appellate Court has disagreed with the findings of declaration, however, as the decree was not challenged by the State Government, the Appellate Court did not interfere with the decree of declaration also.

25. He further points out the findings of the Appellate Court that the contractual terms permitted NIMCO to remove all materials within a period of six months, failing which the property is deemed to be the property of the State Government. He points out that the Appellate Court has come to a finding that NIMCO had not obtained the leasehold rights of mining or license of extracting material from the land where it has dumped the low-grade ore, and the land was also not taken on lease, and therefore, NIMCO would not have any right or license to extract minerals from the ore dumped on the adjoining land or the beach, which was not taken on lease for mining. He would further submit that the Hon'ble Minister, while reviewing the order has not referred to the order of the Appellate Court.

26. Mr. Jadhav, learned counsel for the NIMCO would submit that the State Government had not challenged the declaration granted by the Civil Court before the Appellate Court, and it was NIMCO who was aggrieved by part rejection of the reliefs. He would further point out the averments in the plaint of 1992 that the subject matter of the suit

was material dumped by NIMCO since 1974 on some portion of the beach, which is Survey No. 58. He would further point out that the relief sought was for declaration of ownership of the dumped material described in paragraph 4 i.e. dump on Survey No. 58. He would further submit that the Trial Court has come to a specific finding that just because the seashore or seabed belongs to the Government, the heap of dumped material will not automatically belong to the Government. He submits that the issue of ownership of dumped material was therefore, answered in favor of NIMCO.

27. He would further point out the order of the Hon'ble Minister dated 17th December, 2018, and would submit that though, NIMCO was declared to be the owner of the dumps and the State Government was a party to the Civil Court proceedings, NIMCO was not made a party to the proceedings before the Hon'ble Minister. He submits that in view of the ownership of NIMCO in respect of the dumps, the impugned order has been rightly reviewed under Section 258(2), which provides for review on the ground of discovery of new and important matter of evidence, mistake or error apparent on the face of record, or any other sufficient reason. He submits that there was no order affecting the right between the private parties, and *suo motu* proceedings were initiated, which is permissible under Section 258 of MLRC. He submits that if the ultimate outcome is justified, no interference is warranted

merely on the ground whether the review power could have been exercised or not. He submits that the judgment of Civil Court cannot be overturned in this manner by permitting the Dinanath Ballal, to excavate the dumped material. In support he relies upon the following decisions:

***(i) M.P. Mittal vs State of Haryana And Others*²**

***(ii) Garment Craft vs Prakash Chand Goel*³**

***(iii) Maharaja Chintamani Saran Nath Shahdeo vs State of Bihar And Others*⁴**

***(iv) Pawan Garg And Others vs South Delhi Municipal Corporation*⁵**

***(v) Hari Ram vs State of Rajasthan And Others*⁶**

28. Mr. Samdhani, Learned Senior Advocate appearing for Gadag Mines would submit that in all the proceedings, Dinanath Ballal did not claim ownership of the dump in Survey No. 58 and in all proceedings filed by Mr. Dinanath Ballal, NIMCO was not made a party nor did it have knowledge or notice. He submits that NIMCO's pending application dated 23rd February, 2011 was not referred to or adverted in the order passed in favour of Dinanath Ballal on 17th December, 2018. He submits that on 14th September, 2020, NIMCO addressed a communication

2 (1984) 4 SCC 371

3 (2022) 4 SCC 181

4 (1999) 8 SCC 16

5 2026 SCC OnLine SC 644

6 2026 SCC OnLine SC 580

seeking permission to remove the dump, a copy of which was also served upon Mr. Dinanath Ballal. He submits that NIMCO's communications dated 14th September, 2020, 24th September, 2020 and 15th October, 2020 were taken cognizance of by the State Government under Section 258(2) of MLRC. He submits that taking cognizance of the applications of NIMCO and Gadag Mines, *suo motu* review was initiated by the State Government. He submits that neither NIMCO nor Gadag was party to the proceedings when 2018 order was passed and no reliance can be placed on Section 258(1)(iv) of MLRC, as there is no adjudication of rights of two private persons in as much as Dinanath Ballal never claimed ownership of the dump.

29. He would submit that Clause (iv) to the proviso also does not apply when the State has interest or is concerned. He submits that no limitation is prescribed for exercise of power by the State Government on its own motion and NIMCO was not a party to the proceedings. In support he relies upon the following decisions:

(i) Priya Constructions Pvt. Ltd vs Collector of Mumbai City And Others⁷

(ii) Maa Umiya Transport City and Industrial Estate Ltd And Others vs Nagorao Lahanu Chouke And Others⁸

(iii) Jasbhai Motibhai Desai vs Roshan Kumar, Haji Bashir

⁷ WP No. 2199/07 decided on 19/09/14 by Bombay High Court

⁸ 2020 (1) Mh.L.J. 330

Ahmed And Others⁹

(iv) Dhannalal vs Kalawatibai And Others¹⁰

***(v) Shrikrishna Gangadhar Joshi And Others vs The Charity
Commissioner and Others¹¹***

30. Mr. Khambata, learned Senior Advocate appearing for Redi Port Ltd would submit that the Petitioner No. 1 was selected to undertake the development of all weather multi-purpose port at village Redi, and it was decided that land bearing Survey Nos. 15 and 58, which is forest land, would be allotted. He would further point out that Petitioner No. 1 had entered into necessary agreement with MMB, undertaking compulsory afforestation measures, obtained necessary approvals under Section 2 of the Forest Act, and has made significant payments. He submits that despite thereof, the order of diversion of land has not been passed, as required by circular dated 21st February, 2014.

31. He would point out the photographs on record in order to demonstrate that the subject land i.e. Survey Nos. 15 and 58 is forest land and has ceased to become a dump. He submits that if the impugned orders are allowed to be sustained for removal of dump, the subject land cannot be restored to the existing position. He submits that for removal of the dump, which admittedly was dumped on the

⁹ (1976) 1 SCC 671

¹⁰ (2002) 6 SCC 16

¹¹ WP No. 3700/94 decided on 26/03/25 by Bombay High Court

seabed, the NIMCO would have to go right up to seabed, which is mining and is prohibited. He submits that the fact that the land has been given survey number would indicate that dump has ceased to be dumped and has become land owned by MMB.

32. He would submit that the decree obtained by NIMCO, though sought a declaration for injunction and possession, only declaration of ownership was granted while refusing injunction and possession. He submits that the decree is therefore unexecutable and NIMCO cannot get the decree for possession through the Hon'ble Minister. He would further submit that Dinanath Ballal also cannot get any order of excavation as the policy of 2014, which governed the issue on the date of issuance of the order, required auction to be conducted. He submits that the declaration of ownership obtained by NIMCO was in respect of ore deposited on the seabed, which does not exist, as it is subsumed in land, and it is the State Government, which has become the owner of the land. He submits that the destruction caused by mining as permitted by the impugned order would be substantial.

33. He would further submit that in-principle approval for diversion of forest land has been granted in favor of Petitioner No. 1, as also the final approval on 26th February, 2021. He submits that the land now stands diverted, and therefore, the Hon'ble Minister's order permitting NIMCO to excavate the dump, subject to the condition of seeking

permission under Section 2 of the Forest Act, cannot be satisfied. He submits that in order for the dumps to be retrieved, there would be full-scale excavation and mining, which would be contrary to the Supreme Court judgments which prohibits excavation and mining in forest land.

34. He submits that MOEFCC has already granted its final approval, and on the basis of this approval, MMB and thereafter, Petitioner No. 1 are entitled to diversion of Survey Nos. 15 and 58 for purpose of Redi Port development, for which formal order is required to be issued by the State Forest Department, which is prayer clause (a) sought in the present case.

35. He submits that technical and topographical survey report submitted by an agency appointed by Redi Port Ltd discloses that Survey Nos. 15 and 58 are the lands covered by dense forest. He submits that the impugned orders are in effect authorizing mining and excavation upon forest land, which is *ultra vires* to the Forest Act. He would further submit that the approval under Section 2 of the Forest Act granted to Redi Port, inures to the user agency for stated purpose, and does not attach to land. In support, he relies upon the following decisions:

***(i) Narinder Singh and Others vs Divesh Bhutani and Others*¹²**

(ii) Indian Explosives Ltd. vs Commissioner, Sales Tax, U.P.

¹² (2023) 17 SCC 779

***and Others*¹³**

***(iii) Tarun Bharat Sangh, Alwar vs Union of India And Others*¹⁴**

***(iv) Rural Litigation and Entitlement Kendra vs State of U.P.*¹⁵**

***(v) Lafarge Umiam Mining Private Limited vs Union of India And Others*¹⁶**

***(vi) National Mineral Development Corporation vs Government of India And Others*¹⁷**

***(vii) State of Jharkhand And Others vs Brahmputra Metallica Limited, Ranchi*¹⁸**

***(viii) WG CDR A.U. Tayyaba vs Union of India And Others*¹⁹**

***(ix) The State of Maharashtra vs Shri Narayan Laxman Thatte And Others*²⁰**

***(x) Mineral Area Development Authority And Another vs Steel Authority of India And Another*²¹**

***(xi) The Anant Mills Co. Ltd. vs State of Gujarat And Others*²²**

***(xii) M.K. Rappai And Others vs John And Others*²³**

13 1975 SCC Online All 503

14 1993 Supp (3) SCC 115

15 1989 Supp (1) SCC 504

16 (2011) 7 SCC 338

17 2008 (101) DRJ 339

18 (2023) 10 SCC 634

19 (2023) 5 SCC 688

20 1981 SCC OnLine Bom 124

21 (2024) 10 SCC 1

22 (1975) 2 SCC 175

23 (1969) 2 SCC 590

(xiii) Union of India vs Reliance Industries Ltd. And Another²⁴

(xiv) State of M.P. vs Mangilal Sharma²⁵

(xv) M. Sudakar vs V. Manoharan And Others²⁶

(xvi) Karunakar Shetty vs Shanta Chandappa Alva²⁷

(xvii) Patel Narshi Thakershi And Others vs Shri Pradyumansinghji Arjunsinhji²⁸

(xviii) Ritu Maheshwari vs Promotional Club²⁹

36. In response to Redi Port Ltd's arguments, Mr. Bookwala submits that Redi Port seeks a writ of mandamus, which cannot be granted. He submits that Redi Port has not acquired any vested rights and has taken this Court through the pleadings in the Petition. He would submit that third party cannot get mandamus on behalf of MMB and for a writ of mandamus to be issued, there must be demand and refusal. He submits that all permissions have been obtained by MMB and not by Petitioner No. 1, and MMB has not filed any Petition seeking diversion of the forest land in its favor. He would further point out the pleadings in the Petition that since, there are reserves of iron ore on the land, same are required to be dealt with prior to the diversion of the land. He would further point out that Petitioner No. 1 has pleaded that representation dated

²⁴ 2023 SCC OnLine Del 3538

²⁵ (1998) 2 SCC 510

²⁶ (2011) 1 SCC 484

²⁷ 2020 SCC OnLine Bom 5599

²⁸ 1971(3) SCC 844

²⁹ (2022) 9 SCC 560

25th November, 2022 has been filed with the Hon'ble Minister seeking review/cancellation of the impugned order, and therefore, he has already adopted the alternate remedy.

37. He submits that Redi Port Ltd cannot challenge the permissions granted in favor of Mr. Dinanath Ballal. He has tendered a convenience compilation and would submit that by communication dated 12th August, 2009 addressed by Redi Port Ltd to the Chief Executive Officer, MMB, request is made to follow up with the concerned authorities, which shows that there is no vested right in Redi Port Ltd. He would further point out the communication dated 26th August, 2009 addressed by the MMB seeking transfer of the government land for development of Redi Port. He would further point out the communication of 20th May, 2011 addressed by MMB to the Additional Chief Secretary, Forest seeking allotment of the land. He submits that the communication specifically states that as per 7/12 extract, the land pertains to the Forest Department. He submits that by communication dated 24th February, 2012 addressed by the Revenue and Forest Department to the Chief Port Officer, it is specifically stated that the land bearing Survey Nos. 15 and 58 are forest lands. He would further point out the report dated 24th November, 2014 by which the Directorate of Geology and Mining has submitted that dumps of principle minerals are found in three districts of Kolhapur, Sindhudurg and Raigad. He points out to the

statement annexed to the said report, which shows Survey no. 58 as one of the sites in which the dump has been found. He submits that the in-principle approval has been granted to MMB and not to Redi Port Ltd, and points out to the permissions granted by the Principal Chief Conservator of Forest.

38. He would further submit that in the meeting held on 26th August, 2019, Redi Port officials were present for the meeting, where it was discussed regarding the lifting and transportation of dump available in Survey No. 58 and whether the same would cause any issues for Redi Port. He would point out that the Director had instructed the dump holder to ensure that no pits are created during the lifting process and to lift the dump only up to a certain limit. He submits that no objection was taken by Redi Port, as evident from the meeting held on 18th January, 2020. He submits that Dinanath Ballal, had received permission from Directorate of Geology, Nagpur for transportation of low-grade iron ore, and it was clarified by communication of 11th January, 2013 that removal of old dumps does not amount to mining operations, and the State Government can dispose of such dumps in any manner as it deems fit. He would further submit that Redi Port Ltd has no legal right as of date and was aware of the orders passed, at least since the year 2019, and therefore, the Petition suffers from delays and laches and acquiescence.

39. He submits that the reply of the DGM to Dinanath Ballal's Petition states that the Civil Court has declared that the parties to the suit, i.e. NIMCO and State Government, are the owners of the dump bearing Survey No. 58, and NIMCO is entitled for removal of the dump, which is an erroneous averment, as the Civil Court order does not permit NIMCO to remove the dump. He would submit that the GR of 2014 cannot be applied retrospectively, and the order under review does not speak about retrospective application of the GR of 2014. He submits that as the GR is delegated legislation, it cannot be applied retrospectively. In support he relies upon the following decisions:

***(i) Charanjit Lal Chowdhury vs Union of India And Others*³⁰**

***(ii) Sheoshankar vs State Govt. of Madhya Pradesh And Others*³¹**

***(iii) Para 123 - Application must be in good faith*³²**

(iv) Jasbhai Motibhai Desai vs Roshan Kumar, Haji Bashir Ahmed And Others (supra)

***(v) Ayaaubkhan Noorkhan Pathan vs State of Maharashtra And Others*³³**

***(vi) 005.284 - Conditions precedent of Mandamus*³⁴**

(vii) Kamini Kumar Das Choudhury vs State of West Bengal

³⁰ 1950 SCC 833

³¹ 1951 SCC OnLine MP 49

³² Halsbury's Laws of England 4th Edition (Vol.1)

³³ (2013) 4 SCC 465

³⁴ Halsbury's Laws of India (Volume 1) Administrative Law

And Others³⁵

(viii) Saraswati Industrial Syndicate Ltd. And Others vs Union of India³⁶

(ix) State of Haryana And Another vs Chanan Mal And Others³⁷

(x) Income Tax Officer, Alleppy vs M. C. Ponnose And Other Etc.³⁸

(xi) Maharaja Chintamani Saran Nath Shahdeo vs State of Bihar And Others (supra)

(xii) Banda Development Authority, Banda vs Moti Lal Agarwal And Others³⁹

40. Mr. Sibal, learned Senior Advocate for NIMCO in Writ Petition No. 452 of 2023, would draw attention of this Court to the reliefs sought by Redi Port Ltd. He submits that MMB has not filed the Petition and it is Redi Port who has filed the Petition and seeks a mandamus to direct the State Government to grant the permission to MMB, who shall then divert the land to Petitioner No. 1. He submits that in order to seek a writ of mandamus, Redi Port Ltd must have a vested right. He submits that the land continues to be owned by the State Government and has

35 (1972) 2 SCC 420

36 (1974) 2 SCC 630

37 (1977) 1 SCC 340

38 (1969) 2 SCC 351

39 (2011) 5 SCC 394

not yet been transferred to MMB. He submits that on 26th August, 2009, MMB addressed a letter to Respondent No. 1G stating that under the prevailing port development policy, government land available at port development site was required to be transferred to MMB at a nominal rent of Rs. 1 per annum. He submits that even in 2026, the land is not yet transferred and Redi Port Ltd are seeking a mandamus for allotment of Survey Nos. 15 and 58. He submits that though Redi Port Ltd rely upon a concessioner agreement, the same has not been produced despite notice by NIMCO to produce the agreement and therefore no reliance can be placed on the said agreement.

41. Mr. Sibal would tender a convenience compilation and point out to communication dated 24th November, 2022 addressed by Regional Port Officer, MMB, to the Chief Port Officer seeking permission for preparation of five roads at Survey No. 58. He would point out that the Regional Port Officer has noted the history in the said communication as well as the order passed in the suit of 1992. He would further point out that the communication makes a reference to a letter dated 18th June, 2018 of MOEFCC that the dump material already lying on the land, is not to be extracted by mining and is only to be relocated elsewhere. He would further point out that the Regional Port Officer has noted the order of the Hon'ble Minister and has stated that the dump appears to be at the height of about 55 meters above the sea level and subject to

necessary terms and conditions to ensure that sea water does not enter while the dump is relocated elsewhere it will give momentum and impetus to Redi Port's development. He would further point out that the communication records that Redi Gram Panchayat has issued No Objection Certificate to NIMCO, subject to a condition requiring necessary precautions to ensure that the sea water does not enter the result of this activity. He would further point out from the local level CRZ map which is tendered along with the convenience compilation that the area of Survey No. 58 is proposed as admin area and storage area.

42. He would submit that the ownership of NIMCO to the subject dumped minerals is crystallized and accepted by the State, as there is no challenge by the State and cannot be questioned by Redi Port Ltd or Dinanath Ballal in present Writ Petitions. He submits that Dinanath Ballal has not led any claim of title to the dumped material and he claims from a permission of the State, which is bound by the decree. He would further submit that declaratory decree in favor of NIMCO cannot be set aside merely on the ground that NIMCO did not seek execution. He submits that declaration given by the Civil Court cannot be displaced by an administrative order, nor can it be agitated in proceedings under Article 226 of the Constitution of India. He submits that the present Petition by Redi Port Ltd is mischievous petition to usurp the dump owned by NIMCO to advance their commercial interest.

43. He would further submit that the review jurisdiction has been rightly exercised in terms of Section 258(1) of MLRC, which empowers the State Government to review any order and the occasion for review falls squarely within Section 258(2). He submits that decree was not before the authority when 2018 order was passed, and the non-disclosure of a subsisting civil decree would constitute an eventuality falling under Section 258(2). He submits that the bar contained in Section 258(1)(iv) attaches only to an order affecting the question of right between private persons and the 2018 order was passed in pursuance of Section 48(1) of MLRC, i.e. an exercise of State's power over minerals vested in the Government. He submits that the discretion, having been rightly exercised by the learned Hon'ble Minister, the jurisdiction of this Court need not be exercised. In support he relies upon the following decision :

(i) Oriental Bank Of Commerce vs Sunder Lal Jain & Another⁴⁰

44. Mr. Samdhani would submit that State has not yet allotted the land to MMB and it is obligated to permit removal of dump owned by NIMCO. He submits that the requirement of diversion of forest land is complied by permission granted by MOEFCC though in favour of MMB. He submits that diversion applies to land and not to the applicant. He

⁴⁰ 2008 (2) SCC 280

submits that Gadag Mines is willing to upgrade five existing village roads, which will facilitate the allotment, if any, in favour of Redi Port Ltd.

45. He would further point out to the minutes of the meeting held in January 2020, wherein the Deputy Chairman of Redi Port was present and no objection was raised by Redi Port. He submits that Redi Port Ltd has thereafter filed the present Petition seeking mandamus against the State to grant lands for MMB and in turn MMB to grant the lands to Redi Port Ltd and also challenge the stay order in favor of NIMCO and Mr. Dinanath Ballal.

46. He submits that Redi Port Ltd has annexed only the map *sans* the detailed project report submitted by Redi Port Ltd and accepted in the meeting held on 20th September, 2011, and perusal of the report would establish that Redi Port Ltd wants to use Survey No. 58, which is an artificial hill created by the dump. He submits that the existence of the dump is admitted by Redi Port Ltd in its Petition and communications, and in the course of argument, it is now sought to be suggested that there is no dump, and therefore, the permissions in favor of NIMCO and Gadag be set aside.

47. He submits that the contention of Redi Port Ltd that the decree is merely declaratory and non-executable is devoid of merits, as it has no locus to assail or dispute the decree. He submits that the State, having

suffered the decree, holds the dump as constructive trustee for NIMCO and is under a legal obligation to deliver possession to owner upon obtaining requisite permissions and has accordingly done so. He submits that upon removal of the dump, the land in Survey No. 58 would become vacant and levelled and feasible for usage for development of port as recorded in the report of Regional Port Officer.

48. Mr. Madan, learned senior Advocate for MMB would support the case of Redi Port Ltd. He would tender the plan of proposed expansion of Redi Port and would submit that the reply affidavit of Dinanath Ballal states that period of five years would be required to remove the dump. He submits that the reliance placed by NIMCO on the purported report of MMB is misleading as it is not report of MMB but an internal note of Port Officer of MMB. He submits that MMB has rejected the noting.

49. Learned AGP on behalf of the State would submit that in 1974, the Chief Port Officer, MMB, has granted permission to NIMCO, to dump mining rejections on Survey Nos. 254, 255 and 256, and NIMCO started dumping mining rejection illegally on sea beach and seabed adjoining the leasehold land till 1991. He submits that the dumps were assigned new Survey Nos. 58 and 15 and mixed plantation was carried out on both survey numbers and came to be identified as forest alike. He submits that both survey numbers are recorded in the name of Forest Department, however, possession is still with Revenue

Department. He submits that on 15th May, 2013, the Regional Port Officer, Vengurla submitted proposal in the prescribed proforma to Forest Department to obtain prior permission under Section 2 of the Forest Act. He submits that the proposal of diversion of subject land was submitted to Deputy Conservator of Forest, Maharashtra State, seeking prior approval of the Central Government, and on 12th July, 2016, State of Maharashtra requested Central Government to accord approval to the proposal submitted by Regional Port Officer working under MMB, and thus, the Regional Port Officer is user agency. He submits that all proposals have been routed through MMB. He would further point out that the in principle approval granted by MOEFCC on 21st September, 2017 is in favor of MMB, and the final approval is also being granted to MMB. He would further point out that the *status quo* order passed in the Petition filed by Dinanath Ballal in respect of Survey No. 58 on 25th February, 2022. He submits that the said land is forest land and both the permissions at stage 1 and final approval is in favor of MMB and it is Respondent No. 3, MMB, who has submitted the proposal and deposited the requisite amount in Maharashtra CAMPA account.

50. In rejoinder, Mr. Khambata would submit that the land in question is forest land, as there was illegal dumping of low-grade iron ore upon seashore and seabed, which created a new land, and Survey Nos. 15 and 58 were assigned to the new lands. He submits that once survey

numbers were assigned, material acquired the character of land and can no longer be treated as mineral dumps. He submits that the presumption is that the mutation entry is correct and the same says that the land is created from dump.

51. He submits that there are admissions in the pleadings that land is forest land and no non-forest use is permissible without prior approval of Central Government, which only MMB and Redi Port Ltd has obtained. He submits that the Petitioners have obtained every statutory approval and undertaken all compliances for the diversion and only the consequential order of the state prevails. He has taken this Court in detail through the approvals granted under Section 2 of the Forest Act, in order to contend that these approvals were granted for the benefit of Redi Port Ltd.

52. He submits that the reliance placed by NIMCO on the report of MMB is an internal letter and MMB has not acted on the said letter. He would submit that paragraph 5 of the said report of Regional Port Officer states that the dump is material already lying on land and would point out to the photographs produced by NIMCO themselves, which show that the same is forest land. He would submit that NIMCO's case is of dumping on seabed and now it is stated on the basis of the report that the dump is at 55 meters above sea level. He submits that mutation entry records creation of the land and NIMCO has taken completely

contradictory stand to their own pleadings in the plaint of 1992. He would further point out that in the plaint by NIMCO, in paragraph 9 it is pleaded that NIMCO started digging pits for taking samples of dump soil, and if it were on the land, there was no need to dig any pits. He submits that prayer clause of the plaint refers to paragraph 4 of the plaint as the suit property, which is described as dump on seabed and not above sea level. He submits that the findings of the Civil Court is about dump on seashore and seabed adjoining to three survey numbers. He submits that it is not open for NIMCO to contend that they can remove without excavation and that mining is not permissible on forest land.

53. He submits that according to Appellate Court order, the land is the property of government, and the decree which NIMCO has is in respect of waste dumped on seabed and seashore, and gives NIMCO only ownership right and no right to excavate. He submits that the Hon'ble Minister could not have passed the order permitting removal of dump. He would further point out that permissions have been given under Section 2 of the Forest Act for development of Redi Port, and considering that prior approval of MOEFCC is required, the Hon'ble Minister could not have passed the order permitting removal of dump. He submits that the impugned order, in effect, authorizes mining and excavation upon forest land.

54. He would further point out affidavit-in-reply filed by Respondent No. 2, MOEFCC, specifically mentioning about the concessionaire agreement executed in favour of Redi Port Ltd by MMB. He submits that the Petitioners are willing to produce a copy of the concessionaire agreement. He submits that no reply has been filed by NIMCO and Gadag Mines and there is no dispute that Petitioner is concessionaire. He would further submit that MMB is supporting the case of Redi Port Ltd and submits that the diversion permission is for the benefit of Redi Port Ltd.

55. On the aspect of locus, he would submit that the Hon'ble Minister's order interferes with the right of the Petitioners, and therefore, it is person aggrieved and would be entitled to challenge the orders of the Hon'ble Minister. He would submit that the order of diversion of forest is in favour of the Petitioners and excavation of mineral dump is a non-forest activity, which would affect the Petitioner's rights, and therefore, the Petitioner has locus to challenge the impugned orders. He would further submit that MOEFCC in its affidavit-in-reply has specifically stated that no proposal has been received from any other person under Section 2 of the Forest Act, except from MMB. He submits that without prior approval, as mandated by the statutory provisions of the Forest Act, the Hon'ble Minister could not have passed the impugned order, and therefore, the same is without

jurisdiction. He would further submit that the Petitioners has by communication since 2019 addressed to various authorities called upon the Respondent authorities to take action, and therefore, demand for justice was made and denied, and therefore, the Petitioner has locus to seek the writ of mandamus.

56. In sur-rejoinder Mr. Samdani would submit that Gadag Mines have not been granted land but dump. He submits that the order of the Hon'ble Minister permits the removal of the dump, subject to obtaining permission under Section 2 of the Forest Act. He submits that MMB has specifically pleaded that NIMCO had addressed a letter requesting permission for removal and transportation of low-grade iron ore dumped in Survey No. 58, which was by reason of *status quo* order. He submits that as now land is permitted for non-forest activities, there is no impediment in permitting the removal of the dump.

REASONS AND ANALYSIS:

57. At the core of the dispute are dump stocks of low grade iron ore, which were earlier dumped as mining rejects by NIMCO on sea bed and sea shore and have subsequently acquired a market. The impugned orders passed by the Hon'ble Minister permits the removal of dump stocks in exercise of powers under Section 48(1) of MLRC, first granting permission to Dinanath Ballal to remove the dumps from Survey No 15

and 58 and thereafter reviewing its own order to revoke Dinanath Ballal's permission and grant permission to NIMCO and Gadag Mines. Parallel proceedings involve proposal for expansion of Redi Port on the very same survey no 15 and 58 intertwining the claims of the parties.

58. The facts of the case and submissions canvassed would give rise to the following broad issues for consideration:

(a) Whether the relief of writ of mandamus for diversion of land in favour of MMB can be granted at the instance of Redi Port Ltd.

(b) Whether Redi Port Ltd has the *locus standi* to challenge the impugned orders dated 17th December, 2018 and 19th September, 2019 passed in favour of Dinanath Ballal in respect of Survey No 15 and 58, and order dated 14th October, 2021 passed in favour of NIMCO/Gadag Mines in respect of Survey No 58.

(c) If the answer to Issue (b) above is in affirmative, whether the impugned orders are sustainable in law.

(d) Whether the power of review has been rightly exercised by the Hon'ble Minister, while passing the impugned order dated 14th October, 2021 granting permission to NIMCO/Gadag Mines for removal of iron ore in respect of Survey No 58.

(e) Whether the Petition of Redi Port Ltd suffers from delay,

laches and acquiescence disentitling Redi Port Ltd to any relief.

59. The proceedings pertaining to the proposal for expansion of Redi Port and the permission for removal of iron ore on the subject land were proceeding simultaneously and it would be apposite to set out in tabular chart the relevant facts and dates conjointly in respect of both the proceedings as under:

Dates	Particulars
12.03.1974	Permission granted by Chief Port Officer permitting NIMCO to dump mining rejection in area of Survey Nos.254, 255 and 256 as shown in blue print chart.
13.06.1977	Order of State Government delegating powers of granting permission to Director – Geology and Mining, Nagpur (DGM) for removal mineral ore from dump.
1974 to 1991	NIMCO started dumping on beach and sea bed.
January / February – 1991	NIMCO was prohibited by SDO from dumping waste material on sea bed and sea shore.
28.08.1992	RCS No. 183/1992 instituted by NIMCO claiming ownership of dumped material and injunction against obstruction from removal of dumped material.
03.01.1994	Mutation Entry No.146 was recorded on 03.01.1994 assigning Survey No.58 to the land created near sea shore by reason of dumped materials.
1994 to 1997	Afforestation was carried out on Survey No.58.
15.03.1996	Resolution of Home Department for constitution of Multi Purpose Ports including Redi Port.

26.04.1999	Judgment delivered in RCS No.183/1992 granting only relief of ownership and rejecting prayer of injunction.
09.02.2004	Appellate Court Judgment dated 09.02.2004 dismissing appeal preferred by NIMCO against rejection of prayer of injunction.
28.02.2005	Mutation Entry No.270 recorded for transfer of Survey No.58 from Revenue Department to Forest Department. Name of Forest Department was entered as 'Occupier' in 7/12 extract.
09.02.2007	MMB writes to Collector for allotment of Government land i.e. Survey No.15 and 58 at Village Redi and Konyal.
06.07.2007	Letter of Intent issued by MMB to Redi Port Ltd for development of Multi Purpose Port at Redi.
18.10.2008	Government Resolution of Home Department according sanction to Redi Port Ltd to develop Multi Purpose Port and authorizing MMB to sign concession agreement with Redi Port Ltd. - SPV
26.08.2009	MMB writes to Collector seeking transfer of Government land as per proposal submitted on 09.02.2007. (2 nd proposal)
12.03.2010	Application by Dinanath Ballal to Director – Geology Mining, Nagpur for permission to lift the dump.
23.02.2011	Application by NIMCO to Secretary, Industries, Energy and Employment Department for permission to lift the dump.
20.05.2011	MMB writes to Additional Chief Secretary (Forest) stating that as per 7/12 extracts, the land pertains to Forest Department and requested for expediting matter with Collector.
24.02.2012	Revenue and Forest Department writes to MMB that

	Survey Nos.15 and 58 are forest land and sanction from Central Government is necessary.
15.05.2013	Proposal by MMB under Section 2 of Forest (Conservation) Act, 1980 for diversion of forest land for the project.
15.03.2014	Revised policy for disposal of mineral dumps in State by auction.
24.11.2014	Statement by DGM seeking implementation of revised policy for disposal of mineral dumps in State by auction.
23.06.2016	Office of Chief Conservator of Forest, Nagpur writes to Secretary, Revenue and Forest Department for seeking approval from Central Government for diversion of Survey Nos.15 and 58.
21.09.2017	In – Principle approval granted by MOEFCC in favour of MMB.
17.12.2018	Hon'ble Minister granted permission to Dinanath Ballal to remove dumps from Survey No.58.
10.04.2019	Director Geology and Mining writes to District Mining Officer about permission granted to Dinanath Ballal and directing that no excavation / mining be permitted to be done while pickup and transport of assigned iron ore by Dinanath Ballal.
25.04.2019	Redi Port Ltd write to Deputy Conservator of Forest about having acquired knowledge of unauthorized entry in Survey No.58 and illegal mining.
26.04.2019	Redi Port Ltd write to District Collector about having acquired knowledge of unauthorized entry in Survey No.58 and illegal mining.
05.07.2019	Dinanath Ballal's complaint about Collector not accepting advance payment of royalty.
14.08.2019	Hearing was heard before Hon'ble Minister. Order record that Survey No.58 belongs to State Government

	and there is no objection to State Government granting permission subject to compliance with Forest (Conservation) Act,1980
08.01.2020	2 nd Revised policy for disposal of mineral dumps
18.01.2020	Meeting convened by DGM – minutes record presence of MMB as well as Deputy Chairman of Redi Port Ltd. The minutes record suggestion of Director that if dump is lifted, it would clear area for construction. MMB – Port Officer agreed that they would not object to transportation of dump. It is recorded that no pits be created while lifting dump.
14.09.2020	NIMCO raised objection for allotment of dump land i.e. Survey no. 58 to Dinanath Ballal
24.09.2020	Gadag Mines writes to DGM to grant dump to them as assignee of NIMCO.
15.10.2020	NIMCO write to Deputy Secretary Ministry of Industries to allot dump to Gadag Mines.
08.01.2021	Dinanath Ballal received a letter from Industries, Energy and Labour Dept. informing him about the hearing before Hon'ble Minister pursuant to objection raised by NIMCO.
19.01.2021	Dinanath Ballal submitted his Written submission before Hon'ble Minister.
26.02.2021	Final approval of MOEFCC to MMB.
14.10.2021	Hon'ble Minister conducts hearing and reviews order dated 17.12.2018 cancelling permission given to Dinanath Ballal and permitting Gadag Mines to remove iron ore dumps from Survey No.58.

OWNERSHIP OF DUMPS:

60. The sequence of events tabulated in the chart above would indicate that from the year 1974 to 1991, NIMCO was dumping mining rejects on beach and sea bed and upon being prohibited by SDO filed RCS No 183 of 1992 against State of Maharashtra through Collector of Sindhudurg. The reliefs sought by NIMCO read as under:

"A. It may be declared that, the suit property i.e. dumped material described in para 4 of the plaint is exclusively owned by the plttff. And defendant has no concern with it.

B. The defendant, its officers, servants, Agents etc be restrained by a decree of permanent injunction not to obstruct plaintiff's possession of suit property and not to obstruct plaintiff from digging pits, removing the dumped material from the suit land and do any act to dispose plaintiff.

C. The defendant be directed to pay costs of plaintiff.

D. If the Court finally comes to the conclusion that, the plaintiff is disposed of the suit property, a decree for possession to the extent of portion disposed be passed."

61. Prayer Clause A of the suit refers to suit property as described in para 4 of the plaint. Paragraph 4 of the plaint described suit property as the "material of low percentage of Goan Iron Ore of siliceous and hermatitic types dumped by the plaintiff company since 1974 on some portion of the beach and the bed of sea to the South East of Redi Port...". The judgment of Trial Court dated 26th April, 1999 records in paragraph 4 the fact that in the year 1991, SDO prohibited plaintiff from dumping low grade iron ore on the sea shore and on sea bed near Survey Nos. 254, 255 and 256 of Redi. It further records that plaintiff

company started removing low grade iron ore which was already dumped near Survey Nos. 254, 255 and 256 on sea shore and sea bed, however Collector directed SDO to take possession of dumped iron ore and obstructed plaintiff from taking samples of those dumped iron ores.

62. The facts as recorded in paragraph 4 of the judgment of Trial Court indicates that NIMCO was removing low grade iron ore which was dumped. The response of State Government as recorded in the judgment was that the disputed site belongs to the State Government and permission from Collector would be necessary. The Collector was justified in passing order of taking possession of rejected material and in not allowing the plaintiff to remove the dumped material. The Trial Court came to a finding that dumping was done on the sea shore and sea bed unauthorisedly. It notes that the Collector directed the government officials to take physical possession of dumped material to hold that possession of the dumped material was with the Government and not with the plaintiff. Paragraph 17 of the judgment reiterates that the order of Collector was to take physical possession of the dumped material. The Trial Court opined that the Plaintiff should have prayed for mandatory injunction for directions to the Government for granting permission for removing dumped material, which has not been sought. In paragraph 19 the Trial Court has held that *the land below the dumped*

material definitely belongs to the Government and just because some material has been dumped on it, Collector cannot be restrained from handing over possession of disputed site to the Forest Department. It notes that dumped portion was given to Forest Department.

63. The Trial Court partly decreed the suit granting declaration of ownership of dumped material as described in para 4 of the plaint and rejected the prayer for injunction and possession. The suit was filed in the year 1992 and during pendency of the suit, in the year 1994 Mutation Entry was recorded on 3rd January, 1994 assigning Survey No 58 to land created near sea shore by reason of dumped material. The Trial Court holds that the land below the dumped material belongs to Government and the material has been dumped on it. The judgment records that the Collector had passed an order for taking physical possession of the dumped material. In the event, there were no dumps located on the land, the stand of the State Government would be only of ownership of land and no order could have been issued by the Collector for taking physical possession of dumped material.

64. The judgment of the Trial Court was not challenged by the State Government but by NIMCO being aggrieved by rejection of the relief of possession and injunction. The Appellate Court did not agree with the finding of declaration given by the Trial Court, however, in the absence of any challenge by the State Government could not reverse the said

finding and dismissed the Appeal.

65. It is contended that the decree of declaration is unexecutable and could not be executed indirectly through the impugned order dated 14th October, 2021. The declaratory decree declares the right of the parties under Section 34 of Specific Relief Act, 1963 and Section 35 of the Act governs the effect of declaration and provides that such decree binds the parties to the suit. The non executability of the decree cannot render the declaratory decree invalid and it remains binding as a recognition of right of NIMCO. The State Government being party to the suit is therefore bound by the decree and nature of the decree being non executable does not take away its binding force. NIMCO has obtained decree of ownership of the dumps from the Civil Court, which has attained finality.

66. The judgment of the Trial Court indicates the contest by the Defendant-State claiming ownership of dumped material as it was dumped on government land and evidence being led by the State Government. Though observations were made by the Appellate Court against the decree of declaration, there is no binding force in the observations. The State Government while granting permission to lift the dump exercised power under Section 48 of MLRC which provides for government title to mines and minerals and Sub-section 1 of Section 48 reads as under:

"48(1). [The right to all minerals] [These words were substituted for the words, 'unless it is otherwise expressly provided by the terms of the grant made by the State Government the right to all minerals' by Maharashtra 16 of 1985, section 14(a)] at whatever place found, whether on surface or underground, including all derelict or working mines and quarries, old dumps, pits, fields, bandhas, nallas, creeks, river-beds and such other places, is and is hereby declared to be expressly reserved and shall vest in the State Government which shall have all powers necessary for the proper enjoyment of such rights."

67. The Trial Court has rendered a specific finding that just because the sea bed or sea shore belongs to the Government, heap of dumped material on it would not automatically belong to the Government. The Trial Court held that the dumped material cannot be said to be accretion for the Government to claim ownership. The decree of the Trial Court having attained finality, the ownership of dumped material vests in NIMCO and the order of 17th December, 2018 in favour of Dinanath Ballal could not have been passed by the State Government by virtue of right claimed under Section 48 of MLRC.

68. The Trial Court rejected the relief of injunction against obstructing NIMCO's possession of suit property and from removing dumped material. The rejection of injunction seeking restraint order against the State Government from obstructing the removal of dumped material by NIMCO was founded on the absence of necessary relief of mandatory injunction and emphasised the need to obtain permission of State Government as the ownership of sea bed and sea shore vests in State Government. Despite the observations of the Trial Court, NIMCO did not apply for permission from the State Government from 1999 to

2011 and the application was first filed on 23rd February, 2011 seeking permission for lifting the iron ore dumped on Survey No. 58. There was no consideration of the said application and the application of Dinanath Ballal was considered and came to be allowed by the impugned order dated 17th December, 2018. The rejection of relief of injunction was premised on absence of permission being owner of the sea shore and sea bed on which the material was dumped, which lacuna was sought to be removed by NIMCO by filing the application in the year 2011. The ownership of dumped material clearly vests in NIMCO and permission was sought to be obtained by NIMCO from State Government being owner of the land.

LOCATION OF THE DUMPS:

69. NIMCO has placed on record compilation of documents, which includes the report dated 24th November, 2022 addressed to the Chief Port Officer, MMB, Mumbai by the Regional Port Officer, MMB Vengurla Ports Group, Vengurla, in respect of the permission for preparation of five roads at Survey No. 58, Taluka-Vengurla. The report records that in order to verify the actual position on the ground as per Chief Port Officer's letter dated 22nd September, 2022, the concerned officials together with representative of NIMCO carried out actual site inspection at Redi Port on 14th November, 2022. The report mentions

that Survey No. 58 is meant for port development and the process of transferring the ownership of Survey No. 58 land from Forest Department to MMB is at final stage. It further makes note of the judgment in favor of NIMCO, orders passed by the Hon'ble Minister. In paragraph 12, it notes as under:

"12. On actual site inspection of low-grade iron ore in this matter, dump appears to be at a height of about 55 meters above sea level. (It seems that the concerned dumps are about approximately 55 meters above sea level). Subject to the necessary terms, conditions and precautionary measure to ensure that seawater does not enter while the dump is re-located elsewhere, it is felt that, if a suitable co-ordinated way forward is found in this matter, it will give momentum and impetus to Redi Port development."

70. The report refers to the undertaking by NIMCO for not carrying out mining or digging upto or below sea level. It further notes that Redi Gram Panchayat has issued a No Objection Certificate to the company, subject to a condition requiring necessary precautions to ensure seawater does not enter as a result of this activity. The report states that dumps do not amount to mining operations and as such these dumps can be disposed of by the State Government in any manner it deems fit, and therefore, the memorandum of MOEFCC dated 13th June, 2018 is not applicable, referring to Environmental Clearance dated 20th May, 2022 of MOEFCC according Environmental Clearance dated 8th July, 2021 for Survey Nos. 9, 15, 37 and 58. The report concludes that as regards the five roads required by NIMCO, an actual site inspection was carried out and it was found that it was necessary to construct five

roads for access to and from the dump stop.

71. The response of Redi Port Ltd is that the report is merely an internal noting which was not acted upon by MMB. The report was tendered in relation to permission sought for constructing five roads at various points within Survey no 58. Even if the report was not acted upon, the report refers to a site visit by the officials of MMB, which cannot be easily disregarded. An affidavit in reply has been filed by MMB, which refers to the permission sought by NIMCO for preparation of roads and that no such permission was granted by MMB. There is no positive assertion by MMB that there are no dumps as land has been created and therefore there is no question of granting permission for construction of roads. MMB was aware of the report of their own Regional Port Officer and its visit report but chose not to make any assertion about the report being erroneous about location of dumps.

72. The communication of 24th November, 2014 by Regional Deputy Director, DGM to the Director, DGM records about survey being carried out of all dumps in the sub-division being carried out including Sindhudurg district. It records that survey of places where dumps is found has been conducted and grids have been put in those places. Samples of the said dumps have also been obtained. The statement annexed to report refers to Survey No 15 and 58 as the location where

stock is available.

73. Redi Port Ltd has placed on record a communication dated 15th January, 2020 addressed by Redi Port Ltd to the CEO of MMB referring to meeting held by DGM on 18th January, 2020 to discuss the issues relating to forest land bearing Survey No 15 and 58. Dinanath Ballal has placed on record the minutes of the meeting dated 18th January, 2020. The minutes records the presence of Dinanath Ballal, Regional Port Officer of MMB, Deputy Chairman of Redi Port Ltd and others. The relevant portion of minutes records as under:

“During the meeting, the port officials were asked if lifting and transporting the dump available in Survey No 58 would cause any issues for Ready Port or if they had any objections. The Port Officials mentioned that the construction of Phase II of Ready Port would commence soon and that lifting the dump could potentially hinder the construction work. The Director suggested that if the dump in the area where construction is to begin is lifted first, it would clear the area for construction. The Port Officials agreed that they would not object to the transportation of the dump if it doesn't hinder their construction work.

The Port officials also pointed out that lifting the dump would create pits, to which the Director instructed the dump holder to ensure that no pits are created during the lifting process and to lift the dump only up to a certain limit. Advocate Mr. Satish Muley assured that necessary precautions would be taken during the lifting and transportation of the dump. The Director instructed the District Mining Officer to conduct periodic inspection to verify compliances.

The meeting aimed to facilitate coordination between the Port Officials and the dump holder, ensuring that the transportation of the dump does not hinder the functioning of Ready Port, which is primarily used for the export of iron ore. The Port officials assured the dump holder of their cooperation in facilitating the transportation of the dump.”

74. Though an official of Redi Port Ltd was present for the meeting, there was no objection taken during the meeting as regards the non

existence of dumps or that the permission granted to Dinanath Ballal would result in excavation/mining of subject land and destruction of the land. Redi Port Ltd in its Petition has pleaded in paragraph 3.41 as under:

“(i) Since there were reserves of iron ore/mineral ore on the said lands, the same were required to be deal with prior to the diversion of the land.

(ii) Survey campaigns had been carried out by the office of Directorate of Geology and Mining to inspect dumps in the four districts falling within the Kolhapur sub-division viz: Kolhapur, Ratnagiri, Sindhudurg and Raigad and pursuant thereto a Statement was prepared in which Survey No 15 and 58 were included as places *where dump stocks were located.....*”

75. There is sufficient material on record to indicate an affirmation about the existence of dump stocks on Survey Nos. 15 and 58 by various government authorities. It is difficult to accept that the accreted material acquired the character of land and can no longer be treated as mineral dumps.

GRANT OF WRIT OF MANDAMUS IN FAVOUR OF MMB:

76. The Petitioner No 1 i.e. Redi Port Limited, Petitioner No 2 i.e. Earnest Shipping and Ship Builders Private Limited, along with the Managing Director of Petitioner Nos. 1 and 2, have sought a writ of mandamus against Respondent-Forest Officer and the Revenue Department to allot the subject land i.e. Survey Nos. 15 and 58, by issuing order of diversion in favor of Respondent No. 3- MMB, which will further divert the land to Petitioner No. 1. The relief sought in prayer

clause (a) reads as under:

“a) Issue a writ of mandamus or any other writ, order, or direction in the nature of mandamus, directing Respondent No. 1-A and 1-B, to allot the subject land by issuing the order of diversion in favour of Respondent No. 3, which will further divert the land to Petitioner No.1, in compliance with letter dated 26th February 2021 addressed by Respondent No. 2 read with Addendum dated 8th March 2021 (the final approval);”

77. Mandamus compels performance of duty resting on the person to whom it is issued. The sine qua non is right of applicant in performance of the duty which Respondent has neglected or refused to perform. The Applicant has to satisfy that he has a legal right to performance of legal duty by the party against whom mandamus is sought and such right must be subsisting on the date of petition and in protection of which he is personally interested. (See **Kalyan Singh vs State of Uttar Pradesh And Others**⁴¹).

78. The conditions to be satisfied before issuance of mandamus can be sought are (a) legal right of applicant (b) legal duty of the Respondent (c) demand and refusal. In **Praga Tools Corporation vs C.A. Imanuel And Others**⁴², the Hon'ble Apex Court observed that the condition precedent for issue of mandamus is that, there is in one claiming it a legal right to the performance of a legal duty by one against whom it is sought.

79. In **Mani Subrat Jain And Others vs State of Haryana And**

41 AIR 1962 SC 1183

42 (1969) 1 SCC 585

Others⁴³, the Hon'ble Apex Court observed as under:

"It is elementary though it is to be restated that no one can ask for a mandamus without a legal right. There must be a judicially enforceable right as well as a legally protected right before one suffering a legal grievance can ask for a mandamus. A person can be said to be aggrieved only when a person is denied a legal right by someone who has a legal duty to do something or to abstain from doing something."

80. In **State of Kerala vs A.Lakshmikutty⁴⁴**, the Hon'ble Apex Court observed as under:

"There must be a judicially enforceable right for the enforcement of which a mandamus will lie. The legal right to enforce the performance of a duty must be in the applicant himself. In general, therefore, the Court will only enforce the performance of statutory duties by public bodies on application of a person who can show that he has himself a legal right to insist on such performance."

81. It is necessary to set out the legal duty of the Respondents which the Constitution, statute or common law requires to be done. It is well settled that a mandamus lies to secure the performance of a public or statutory duty.

82. The communication dated 9th February, 2007 addressed by MMB indicates a request made by MMB to the Collector, Sindhudurg, seeking allotment of Survey Nos. 15 and 58 as per the GR's dated 15th March, 1996, 20th November, 2000 and 24th April, 2002 regarding development of ports through private sector, where the land, if owned by government is required to be transferred to MMB on nominal lease rent of Rs. 1 p.a.

83. It is an admitted position that the name of Government was

43 (1977) 1 SCC 486

44 (1986) 4 SCC 632

entered in revenue records of Survey Nos. 15 and 58. It is pleaded in paragraph 3.12 of the Petition of Redi Port Ltd that in the year 2011, the land was still not transferred to MMB. In paragraph 3.26, it is pleaded that selection of Petitioner No 2 has been approved by Government Resolution of 2008, in principle approval and final approval under Section 2 has been granted for use of Survey Nos. 15 and 58 for development of Redi Port and that the Petitioners have vested rights in subject land.

84. The approvals have been granted in favour of MMB and the entitlement, if any, is of MMB to seek allotment of land. The Petition is replete with pleadings as regards right of MMB to allotment of land. The right, if any, of Redi Port Ltd is a contractual right arising out the concession agreement entered with MMB. The purpose of writ of mandamus is to protect an established right and to enforce a corresponding imperative duty existing in law. The writ cannot be granted unless it is established that there is an existing legal right of the applicant and is clearly exercise of discretion. (See ***Rajasthan State Industrial Development & Investment Corporation And Another vs Diamond and Gem Development Corporation Ltd. And Another***⁴⁵).

85. The common reply Affidavit of Respondent Nos 1A i.e. Forest Department, 1 E i.e. Principal Chief Conservator of Forests and 1F i.e.

⁴⁵ 2013 5 SCC 470

Deputy Conservator of Forests states in paragraph 70 that Petitioner No 1 did not submit proposal for diversion of subject land for non forest purpose but was submitted by Regional Port Officer, Vengurla. That Regional Port Officer, Vengurla and not the Petitioner No 1 deposited the amount of Rs. 6,47,00,000/- and Rs. 1,80,000/- to the State of Maharashtra CAMPA account. The user agency to whom the permissions for diversion of forest land has been obtained is MMB and not Redi Port Ltd.

86. In the case of ***Oriental Bank Of Commerce*** (supra), the Hon'ble Apex Court was considering the order of Delhi High Court by which direction was issued to the Appellant-Oriental Bank of Commerce to declare the Respondent's account as Non-Performing Asset. The Hon'ble Apex Court noted that the prayer of the Respondent before the High Court was a writ of mandamus to be issued, commanding Appellant-bank to declare the Respondent's account as NPA and to apply the RBI guidelines to their case, whereby the liability towards Appellant-bank would be considerably reduced by way of one-time settlement. The Hon'ble Apex Court noted the principles on which the writ of mandamus can be issued in paragraph 11 as under:

"11. The principles on which a writ of mandamus can be issued have been stated as under in The Law of Extraordinary Legal Remedies by F.G. Ferris and F.G. Ferris, Jr.:

Note 187.-Mandamus, at common law, is a highly prerogative writ, usually issuing out of the highest court of general jurisdiction, in the name of the

sovereignty, directed to any natural person, corporation or inferior court within the jurisdiction, requiring them to do some particular thing therein specified, and which appertains to their office or duty. Generally speaking, it may be said that mandamus is a summary writ, issuing from the proper court, commanding the official or board to which it is addressed to perform some specific legal duty to which the party applying for the writ is entitled of legal right to have performed.

Note 192. Mandamus is, subject to the exercise of a sound judicial discretion, the appropriate remedy to enforce a plain, positive, specific and ministerial duty presently existing and imposed by law upon officers and others who refuse or neglect to perform such duty, when there is no other adequate and specific legal remedy and without which there would be a failure of justice. The chief function of the writ is to compel the performance of public duties prescribed by statute, and to keep subordinate and inferior bodies and tribunals exercising public functions within their jurisdictions. It is not necessary, however, that the duty be imposed by statute; mandamus lies as well for the enforcement of a common law duty.

Note 196. Mandamus is not a writ of right. Its issuance unquestionably lies in the sound judicial discretion of the court, subject always to the well-settled principles which have been established by the courts. An action in mandamus is not governed by the principles of ordinary litigation where the matters alleged on one side and not denied on the other are taken as true, and judgment pronounced thereon as of course. While mandamus is classed as a legal remedy, its issuance is largely controlled by equitable principles. Before granting the writ the court may, and should, look to the larger public interest which may be concerned-an interest which private litigants are apt to overlook when striving for private ends. The court should act in view of all the existing facts, and with due regard to the consequences which will result. It is in every case a discretion dependent upon all the surrounding facts and e circumstances.

Note 206.-... The correct rule is that mandamus will not lie where the duty is clearly discretionary and the party upon whom the duty rests has exercised his discretion reasonably and within his jurisdiction, that is, upon facts sufficient to support his action."

87. It further noted that these principles have been adopted by our Courts and held in paragraph 12 as under:

"These very principles have been adopted in our country. In Bihar Eastern Gangetic Fishermen Coop. Society Ltd. v. Sipahi Singh¹ after referring to the earlier decisions in Lekhraj Sathramdas Lalvani v. N.M. Shah², Rai Shivendra Bahadur (Dr.) v. Nalanda College³ and Umakant Saran (Dr.) v. State of Bihar⁴ this Court observed as follows in para 15 of the Reports (SCC): (Sipahi Singh case¹, SCC pp. 152-53)

'15. There is abundant authority in favour of the proposition that a writ of mandamus can be granted only in a case where there is a statutory duty imposed upon the officer concerned and there is a failure on the part of that officer to discharge the statutory obligation. The chief function of a writ is to compel performance of public duties prescribed by statute and to keep subordinate tribunals and officers exercising public functions within the limit of their jurisdiction. It follows, therefore, that in order that mandamus may issue to compel the authorities to do something, it must be shown that there is a statute which imposes a legal duty and the aggrieved party has a legal right under the statute to enforce its performance.... In the instant case, it has not been shown by Respondent 1 that there is any statute or rule having the force of law which casts a duty on Respondents 2 to 4 which they failed to perform. All that is sought to be enforced is an obligation flowing from a contract which, as already indicated, is also not binding and enforceable. Accordingly, we are clearly of the opinion that Respondent 1 was not entitled to apply for grant of a writ of mandamus under Article 226 of the Constitution and the High Court was not competent to issue the same.'

(Emphasis supplied)

Therefore, in order that a writ of mandamus may be issued, there must be a legal right with the party asking for the writ to compel the performance of some statutory duty cast upon the authorities. The respondents have not been able to show that there is any statute or rule having the force of law which casts a duty on the appellant Bank to declare their account as NPA from 31-3-2000 and apply RBI Guidelines to their case."

88. Mr. Bookwala has relied upon the Halsbury's Laws of England (supra), where it is noted in paragraph 123 as under:

"123. Application must be made in good faith: Not only must I appear that the applicant is himself a person having a real interest in the performance of the duty sought to be enforced but also that he makes the application in good faith and not for an indirect purpose. If it appears that the application for mandamus is really on behalf of some third party the order will be refused..."

89. In *Calcutta Gas Company (Proprietary) Ltd. vs State of West Bengal And Others*⁴⁶, the Hon'ble Apex Court observed as under:

"The article in terms does not describe the classes of persons entitled to apply thereunder; but it is implicit in the exercise of the extraordinary jurisdiction that the relief asked for must be one to enforce a legal right....The right that can be enforced under Article 226 also shall ordinarily be the personal or individual right of the Petitioner himself..."

⁴⁶ AIR 1962 SC 1044

90. Redi Port Ltd claims that there was demand and refusal by relying on the various communications with the authorities. The communications do not disclose demand made by Redi Port Ltd for allotment of land and are in nature of complaints made to various authorities. In any event, the demand, if any, can be at the instance of MMB in whose favour the order under Section 2 of Forest Act has been passed as user agency. The mentioning of the proposal of Redi Port Ltd in the approvals under Section 2 of Forest Act does not change the user agency i.e. MMB. It is specifically stated by the State authorities that the amounts deposited in the State CAMPA account is in the name of MMB. It is difficult to accept that the imperative test of demand and refusal has been met by Redi Port Ltd.

91. For a writ of mandamus to be issued, there must be a legal right inhering in the party seeking the writ and corresponding duty cast upon the authorities, which can be compelled by issuance of writ. The manner in which prayer clause (a) of the Petition is worded makes it evident that Redi Port Ltd was conscious of the absence of legal entitlement of Redi Port Ltd to seek writ of mandamus against the statutory authorities. There is no pleading as to why the Petition could not have been filed by MMB, in whose favour the final approval under Section 2 of Forest Act has been granted. The Petition by Redi Port Ltd is an action for and on

behalf of Respondent No 3 MMB. To borrow an expression from private law remedy, the present Petition is in nature of derivative action and there is no pleading that MMB was disabled from initiating proceedings for enforcing its own rights.

LOCUS OF REDI PORT LTD TO CHALLENGE THE IMPUGNED ORDERS:

92. Though Redi Port Ltd may be disentitled to seek mandamus in favour of MMB, the challenge to validity of the impugned orders rests on the answer of locus of Redi Port Ltd. Dealing with the objection raised to the locus of Redi Port Ltd to seek writ of certiorari for quashing the impugned orders. In *Halsbury's Laws of England Vol 1 (4th Edn)* it is stated:

“An order of Certiorari is the appropriate remedy where the jurisdiction of justices is impugned, or where a conviction or order has been obtained by collusion, or, it would seem, by fraud, or where an error appears on the face of the proceedings, or where there has been failure to comply with a statutory requirement that the defendant be asked whether he pleads guilty or not guilty. The issue of order of certiorari in such a case is discretionary.”

93. The inquiry to be conducted for issuance of writ of certiorari is whether the action of the judicial or quasi judicial authority is without jurisdiction or in excess of power vested in it. It is in the nature of corrective writ by which the Constitutional Courts exercises supervisory jurisdiction. It is settled that ordinarily, the party whose rights are affected may apply for a writ of certiorari.

94. In *Satyanarayana Sinha vs S. Lal And Company (P) Ltd.*⁴⁷, the Hon'ble Apex Court has held that where the application is made by the party aggrieved, the court should grant the writ *ex debito justitiae*; however, where it is by a person not directly interested, the area of discretion is greater for the Court.

95. In *Jasbhai Motibhai Desai* (supra), the Hon'ble Apex Court has considered the expression "persons aggrieved". It has held in paragraphs 34, 35, 37, 38 and 39 as under:

"34. This Court has laid down in a number of decisions that in order to have the locus standi to invoke the extraordinary jurisdiction under Article 226, an applicant should ordinarily be one who has a personal or individual right in the subject-matter of the application, though in the case of some of the writs like habeas corpus or quo warranto this rule is relaxed or modified. In other words, as a general rule, infringement of some legal right or prejudice to some legal interest inhering in the petitioner is necessary to give him a locus standi in the matter (see *State of Orissa v. Madan Gopal Rungtas*; *Calcutta Gas Co. v. State of W. B.*; *Ram Umeshwari Suthoo v. Member, Board of Revenue, Orissa*; *Gadde Venkateswara Rao v. Government of A. P.*; *State of Orissa v. Rajasaheb Chandanmall*"; *Dr. Satyanarayana Sinha v. M/s. S. Lal & Co.*).

35. The expression "ordinarily" indicates that this is not a cast-iron rule. It is flexible enough to take in those cases where the applicant has been prejudicially affected by an act or omission of an authority, even though he has no proprietary or even a fiduciary interest in the subject-matter. That apart, in exceptional cases even a stranger or a person who was not a party to the proceedings before the authority, but has a substantial and genuine interest in the subject-matter of the proceedings will be covered by this rule. The principles enunciated in the English cases noticed above, are not inconsistent with it.

37. It will be seen that in the context of locus standi to apply for a writ of certiorari, an applicant may ordinarily fall in any of these categories: (i) 'person aggrieved'; (ii) 'stranger'; (iii) busybody or meddle-some interloper. Persons in the last category are easily distinguishable from those coming under the first two categories. Such persons interfere in things which do not concern them. They masquerade as crusaders for justice. They pretend to act in the name of pro bono publico, though they have no interest of the public or even of their own to protect. They

⁴⁷ (1973) 2 SCC 696

indulge in the pastime of meddling with the judicial process either by force of habit or from improper motives. Often, they are actuated by a desire to win notoriety or cheap popularity; while the ulterior intent of some applicants in this category, may be no more than spoking the wheels of administration. The High Court should do well to reject the applications of such busybodies at the threshold.

38. The distinction between the first and second categories of applicants, though real is not always well demarcated. The first category, as it were, two concentric zones a solid central zone of certainty, and a grey outer circle of lessening certainty in a sliding centrifugal scale, with an outermost nebulous fringe of uncertainty. Applicants falling within the central zone are those whose legal rights have been infringed. Such applicants undoubtedly stand in the category of "persons aggrieved". In the grey outer circle the bounds which separate the first category from the second, intermix, interfuse and overlap increasingly in a centrifugal direction. All persons in this outer zone may not be "persons aggrieved".

39. To distinguish such applicants from 'strangers', among them, some broad tests may be deduced from the conspectus made above. These tests are not absolute and ultimate. Their efficacy varies according to the circumstances of the case, including the statutory context in which the matter falls to be considered. These are: Whether the applicant is a person whose legal right has been infringed? Has he suffered a legal wrong or injury, in the sense, that his interest, recognised by law, has been prejudicially and directly affected by the act or omission of the authority, complained of? Is he a person who has suffered a legal grievance, a person against whom a decision has been pronounced which has wrongfully deprived him of something or wrongfully refused him something, or wrongfully affected his title to something?

Has he a special and substantial grievance of his own beyond some grievance or inconvenience suffered by him in common with the rest of the public? Was he entitled to object and be heard by the authority before it took the impugned action? If so, was he prejudicially affected in the exercise of that right by the act of usurpation of jurisdiction on the part of the authority? Is the statute, in the context of which the scope of the words "person aggrieved" is being considered, a social welfare measure designed to lay down ethical or professional standards of conduct for the community? Or is it a statute dealing with private rights of particular individuals?"

96. Applying the tests enumerated by the Hon'ble Apex Court, in the context of *locus standi*, Redi Port Ltd cannot be said to be a stranger or meddlesome interloper. The question to be answered is whether Redi Port Ltd has suffered a legal grievance or the impugned orders affect

the right of Redi Port Ltd. The impugned orders of the Hon'ble Minister permits removal of the dumps on Survey No 15 and 58. There can be no right claimed by Redi Port Ltd in the dumps, however, record indicates that the said lands have been identified by MMB for expansion and development of Redi Port. Redi Port Ltd claims a right to develop the multipurpose Redi Port under a concession agreement executed with MMB. Though the concession agreement has not been placed on record, the reply affidavit of MMB supports the execution of a concession agreement. The record indicates the GR issued by the Home Department on 18th October, 2008 according sanction to the selection of Petitioner No. 2 for development of all-weather multipurpose port at Redi through the agreement for Memorandum of Understanding. The sanction is also accorded to transfer all existing facilities and government assets to Redi Port Ltd for period of 50 years from the date of signing the concession agreement. The local level CRZ map produced on record shows facilities proposed on Survey No 15 and 58 for purpose of expansion of Redi Port.

97. It cannot be disputed that Redi Port Ltd has sufficient interest in the land bearing Survey No 15 and 58, maybe not in the dumps itself. The policy of 13th June, 1977 and the policy of 15th March, 2014 of the State Government states that removal of dumps do not amount to mining operations in terms of Section 3(d) of Mines and Minerals

(Regulation and Development) Act, 1957. Even if the permissions granted by the impugned order does not constitute mining operations as defined in Act of 1957, we are not inclined to accept that considering the thick vegetation on the subject lands, it would be possible to remove the dump stocks without any digging/excavation and without destroying the surface of land. The implications of the activity of removal of dumps would be noticeable on the subject land proposed for expansion of Redi Port.

98. The recommendation for diversion of forest land by the Additional Principal Chief Conservator of Forests dated dated 23rd June, 2016 refers to the concessional agreement entered with Petitioner No 2 for development of Redi Port. The in-principle approval has been granted by MOEFCC on 21st September, 2017 for diversion of identified forest land i.e. the subject land in favour of MMB and the final approval has been granted on 26th February, 2021 under Section 2 of Forest Act in favour of MMB. The execution of concession agreement by MMB with Redi Port Ltd has been accepted in the reply affidavit of MMB. Dinanath Ballal in its Affidavit in reply has admitted about the removal of iron ore requiring mining and extraction as it avers that once the mining of the iron ore is extracted from the dump lying at Survey No 58, the surface of the land which will superficially remain and mineral extraction will not demolish the survey no 15 or 58. It is further stated that Dinanath

Ballal will require at least five years to extract the iron ore from the dump.

99. In *Jashabai Motibhai Desai* (supra), it has been held that in exceptional cases even a stranger of a person who is not a party to the proceedings before the authority, but has a substantial and genuine interest in the subject matter of the proceedings will be covered by this rule. The present case would be such a case and Redi Port Ltd cannot be said to be a stranger unconcerned with the subject matter. In our view, Redi Port Ltd has the *locus standi* to challenge the impugned orders, which are likely to adversely affect its interest.

VALIDITY OF IMPUGNED ORDERS:

100. Apart from the above, we are inclined to exercise the writ jurisdiction as we find that while passing the impugned orders, the Hon'ble Minister has failed to notice the intervening significant development of the subject land having acquired the status of forest land. The impugned orders do not reveal any inquiry into the process/activity necessary for removal of iron ore. There is no consideration as to the effect of removal of iron ore on forest land. The impugned orders proceed on the basis that removal of dump stocks do not constitute mining, and there is no inquiry as to whether the dump stocks can be transported without any excavation/digging. The

impugned orders do not take into consideration the statutory provisions of Forest Conservation Act and that by reason of the permission granted for removal of iron ore, the forest land would be put to non forest use. It cannot be debated that environmental deterioration is a matter of great concern and its regulatory check is a predominant obligation.

101. Perusal of the photographs on record would indicate that the land is covered by thick vegetation. The subject land is admittedly identified as forest land as there was plantation carried out by the Social Forestry Department. Gadag Mines in its written submissions has accepted that one of the impediments in the way of granting permission and allowing removal was declaration of area of Survey No 58 as forest and requirement of diversion.

102. The significant question is whether the impugned orders are unsustainable being in violation of mandate of Section 2 of the Forest Act as the order permits the removal of iron ore without the prior approval of the Central Government.

103. The order of 17th December, 2018 was passed by the Hon'ble Minister in exercise of ownership rights conferred by Section 48(1) of MLRC permitting removal of dumps from three survey numbers including subject Survey No 58. The order directs the Director Geology and Mining to take further necessary action and to ensure the

compliance of the provisions of Forest Act and Environment Protection Act 1986, *if applicable*. It further directs for obtaining necessary permission from respective competent authorities before commencing the work. Subsequent thereto, Dinanath Ballal obtained NOC from Gram Panchayat office at Redi, consent to operate from Maharashtra Pollution Control Board and permission from Director, Geology and Mines. The Petition of Dinanath Ballal's pleads that he has initiated action on procuring various permissions as required under Forest Conservation Act and Environment and CRZ permission with Central Government. Pertinently, those applications are not placed on record and the Petition craves leave to refer to and rely on the said applications.

104. The impugned order of 19th September, 2019 passed in review filed by Dinanath Ballal against the rejection of his application for removal of iron ore dumps in Survey No 15 grants permission with the direction that the applicant has to obtain necessary permissions from requisite authorities including the compliance of the provisions of Section 2 of Forest Act and Environment Protection Act 1986 before commencement of work.

105. The impugned order of 14th October, 2021 passed in review in favour of NIMCO/Gadag Mines grants permission to remove the iron ore and directs compliance of the provisions of Section 2 of Forest Act and Environment Protection Act 1986 before commencement of work.

106. The directions to seek compliance of Section 2 of Forest Act indicates that the Hon'ble Minister was conscious of the fact that the subject land was forest land. The land being identified as forest land, the grant of permission to remove iron ore constitutes permission for non forest use and would require clearing of trees. It is nobody's case that without diversion of forest land, the work of removal of iron ore can be carried out. Section 2 of Forest Act restricts de-reservation of forests or use of forest land for non forest purpose and reads as under:

"2. Restriction on the de-reservation of forests or use of forest land for non-forest purpose

Notwithstanding anything contained in any other law for the time being in force in a State, no State Government or other authority shall make, except with the prior approval of the Central Government, any order directing -

i) that any reserved forest (within the meaning of the expression "reserved forest" in any law for the time being in force in that State) or any portion thereof, shall cease to be reserved;

ii) that any forest land or any portion thereof may be used for any non-forest purpose;

iii) that any forest land or any portion thereof may be assigned by way of lease or otherwise to any private person or to any authority, corporation, agency or any other organisation not owned, managed or controlled by Government;

iv) that any forest land or any portion thereof may be cleared of trees which have grown naturally in that land or portion, for the purpose of using it for reafforestation.

Explanation - For the purpose of this section, "non-forest purpose" means the breaking up or clearing of any forest land or portion thereof for-

a) the cultivation of tea, coffee, spices, rubber, palms, oil-bearing plants, horticultural crops or medicinal plants;

b) any purpose other than reafforestation;

but does not include any work relating or ancillary to conservation, development and management of forests and wildlife, namely, the establishment of check-posts, fire lines, wireless communications and

construction of fencing, bridges and culverts, dams, waterholes, trench marks, boundary marks, pipelines or other like purposes.”

107. The Central Government has framed the Forest (Conservation) Rules, 2003 setting out the constitution of the Forest Advisory Committee and Regional Empowered Committee. Rule 6 governs the submission of proposals seeking approval of the Central Government under Section 2 of the Act. It provides for an application by user agency to Nodal Officer of the concerned State Government. The Nodal Officer, after scrutinizing the proposal is required to forward the same to the concerned Divisional Forest Officer and District Collector, who then processes the same and forwards it to Conservator of Forests. After examining the factual details and feasibility of proposal and carrying out site inspection, the Conservator of Forest forwards the proposal with recommendations to the Nodal Officer, who then forwards the proposal to the State Government. The State Government, if agreeable in principle to de-reserve or divert for non forest purpose the forest land, shall forward the same to Central Government. Rule 7 provides for the Regional office to examine the proposal and if satisfied to grant in principle approval and forward the same alongwith the views of the Advisory Group to the Central Government. The Central Government after considering the views of Advisory Group may grant in principle approval. Rule 8 provides that the on receipt of in principle approval, the Nodal Officer shall endorse a copy of the same to the concerned

Divisional Forest Officer and Conservator of Forests, who shall prepare demand note as regards the compensatory levies to be paid by the user agency. After compliance, the State Government shall forward the proposal to the MOEFCC, who may after the compliance report is considered, grant final approval.

108. The Rules discussed above provides for several regulatory checks for seeking approval under Section 2 of the Forest Act, and the proposal to be routed through the State Government. Admittedly, before the impugned orders granted permission to use forest land for non forest use by permitting removal of iron ore, no approval as prescribed under Section 2 of the Forest Act was obtained or even initiated. The reply affidavit of Dinanath Ballal states that proceedings for seeking approval under Forest Act were initiated, which is unsubstantiated and NIMCO/Gadag Mines do not even lay such a claim. Irrespective of the same, what is mandated under Section 2 of Forest Conservation Act is prior approval, which cannot be substituted by *ex post facto* approval.

109. The approval under Section 2 of Forest Act in favour of Redi Port Ltd cannot inure to the benefit of NIMCO/Gadag Mines. The Forest (Conversation) Rules, whether of the year 2003 or the superseded Rules of 2023 prescribes detailed screening of the proposals submitted and the proposal submitted by Redi Port Ltd for diversion of forest land for development of Redi Port cannot constitute permission attached to the

land. The important consideration is the non forest activity proposed, the area of forest land to be diverted, the compensatory costs and imposition of conditions, all of which are premised on the proposal itself and not on the land. Consequently, no benefit can be claimed by Dinanath Balall, NIMCO/Gadag Mines from the final approval granted in favour of MMB.

110. The Delhi High Court in ***National Mineral Development Corporation*** (supra) considered the validity of approval of Union Government given under Section 5(1) of Mines and Mineral (Development and Regulation) Act granting prospecting license. It noted the provisions of Section 2 of Forest Act and the Rules framed thereunder and considered whether there was violation of Section 2 of Forest Act as the prior approval of Central Government was not obtained. It noted in paragraph 36 as under:

“36. If the interpretation suggested by the third respondent were to be accepted, the State Government would be free to take all the steps save the last order authorizing the entry into the forest and its destruction, and obtain all manner of approvals under the MMDR Act; after having secured them, including the “prior approval” of the Central Government under Section 5 of the MMDR Act, it has then to seek the approval under Section 2 of the Forest Act. This construction, seemingly pragmatic, undercuts the imperative nature of Section 2. What cannot be forgotten is that Section 2 is cast in non-obstante terms; it overrides all other laws, including though not limited to the MMDR Act. Thus, mining being one species of non-forest activity, Parliament did not intend to curtail the width of the injunction under Section 2 to its application at the penultimate step in any kind of proposed non-forest activity. Today, we see one legislative model, when the MMDR Act is before us. However, myriad legislative models exist in the country within different legal regimes; they may deal with land, housing, electricity, roads, highway, townships and a clutch of laws dealing with development. Parliamentary intention, in enacting the prohibition against non-forest activity without

previous approval, was not to subsume or subordinate that injunction to the individual considerations of those laws and legislative purposes. It was clearly to override it and enact the obligation of a prior approval. This intent has been discerned in all judgments of the Supreme Court on the Forest Act. Therefore, the only way of giving effect to Section 2 would be to hold that whenever the State (and after the State, the Central Government, as a superior authority in the hierarchy of statutory basis as in this case) is asked to divert any forest land for a non-forest purpose, it has to, before taking other steps, seek prior approval under the Forest Act, and Rules. The rules cast an obligation to decide such application within 60 days. This interpretation furthers the objects of the Forest Act; it also compels the state not to take any step towards, including granting or even recommending other statutory clearances or approvals, concerning diversion of forest lands, till the approval under Section 2 is granted. The State, being aware of the nature of resources and extent of its forests, would also be spared the effort of having to consider proposals, grant approvals, obtain approval of the Central Government wherever required, under other laws and then approach under the Forest Act. In such eventuality, the entire effort of such previous clearance/approval could be wasted, if the clearance under the Forest Act were denied. On the other hand, placing the Forest Act approval in the forefront of the sequence of statutory approvals and scrutiny would be logical; the impact assessment by the Forest Act authorities would be uncluttered by the consideration of approvals having been granted under other laws. This would in turn assure that no "critical mass" is developed by way of the agency or company concerned, being armed with such approvals, letters of confirmation, or orders that are prelude to actions permitting non-forest activities under other laws or would exist on the record."

111. We are in agreement with the view expressed by the Delhi High Court as the view taken is in alignment with the object of the Forest Act. In ***Tarun Bharat Sangh, Alwar*** (supra), the Hon'ble Apex Court has held grant of mining leases/licences and their renewal by State Government without prior approval of Central Government is contrary to law.

112. It cannot be disputed that the activity of removal of iron ore would require clearing of forest which constitutes non forest use and the impugned orders permits the non forest use without prior approval of the Central Government. The impugned orders permitting non forest

use subject to the condition of obtaining approval under Section 2 of Forest Act, NIMCO/Gadag Mines does not satisfy the mandate of Section 2 of Forest Act and no authority has been cited to demonstrate that *ex post facto* approval under Section 2 of Forest Act is legally permissible. The authorities cited at the bar states otherwise.

113. In ***Narinder Singh*** (supra), the Hon'ble Apex Court has held that the State Government or any other authority can always permit the use of any forest land or any portion thereof for non-forest purpose only with prior approval of the Central Government. It noted that the object of the embargo on permitting non forest use of forest land without prior permission of Central Government is not to completely prevent the conduct of non forest activities. This provision enables the Central Government to regulate non forest use of forest lands.

114. The impugned orders directed Dinanath Ballal, NIMCO/Gadag Mines to obtain necessary permissions under Section 2 of Forest Act, which is not in accordance with the procedure prescribed under the Rules framed under the Forest Act. The statutory prohibition is directed not only at the physical commencement of non forest activity but also at an order authorizing use of forest land for non forest purpose. The dump removal policy cannot be used for permitting non forest use without prior approval of the Central Government and renders the impugned orders vulnerable.

115. Similarly, the fact that the Civil Court has declared NIMCO as owner of the dump stocks cannot bypass the requirement of obtaining prior approval of Central Government under Section 2 of the Forest Act.

116. One of the submissions canvassed to oppose the Petition of Redi Port Ltd was on the ground of delay, laches and acquiescence. Redi Port Ltd acquired knowledge of the impugned order dated 17th December, 2018 passed in favour of Dinanath Ballal on 31st July, 2019 as pleaded in paragraph 3.28 of the Petition. It is further pleaded in paragraph 3.30 and 3.31 that in the intervening period between issuance of in principle approval dated 21st September, 2017 and final approval dated 26th February, 2021, Redi Port Ltd learnt about the directions issued to District Mining Office and for initialising of process of auctioning removal of dumps from survey no 15. In so far as acquiescence is concerned, the contention is premised on the meeting held on 18th January, 2020 in which the official of Redi Port Ltd was present. The acquiescence, if any, can be considered in so as far as objection to removal of dump stock by Dinanath Ballal is concerned. The acquiescence cannot render validity to the impugned orders, which are in gross violation of Forest Act as they are not preceded by approval of the Central Government. We are also not inclined to consider the aspect of delay in view of the fact that the impugned orders permit non forest use of forest land without the proposals being screened by the Central

Government and without following the prescribed procedure. The impugned orders have transgressed from contest between private parties into the larger spectrum of ecological interest which cannot be permitted to be compromised on the technical ground of delay.

117. As we have held that the impugned orders are unsustainable being issued without jurisdiction, it is not necessary to consider the contest between Dinanath Ballal and NIMCO/Gadag Mines as regards the review power exercised by the Hon'ble Minister while passing the impugned order dated 14th October, 2021. However we are not inclined to accept the submission that the impugned orders are contrary to policy prevailing on the dates on which they were passed. The order of 17th April, 2018 was passed by the Hon'ble Minister in favour of Dinanath Ballal exercising powers under Section 48 of MLRC. The application was filed by Dinanath Ballal on 12th March, 2010 seeking permission to lifting the iron ore rejects. The application was filed by Dinanath Ballal invoking the powers under Section 48 of MLRC.

118. Perusal of the said order dated 17th December, 2018 would indicate that the Hon'ble Minister has noted that the ownership of these dumps vest in the State Government under Section 48(1) of the MLRC and under the policy of 13th June, 1977, the State Government used to grant permission to persons applying for removal of these dumps. As per the policy dated 13th June, 1977, power was delegated by

the State Government to the Director, Geology and Mining, Nagpur of granting permission to remove the mineral ore from the dumps setting out the guidelines and also providing for fixing of the rate of royalty.

119. The order further records that in the *interregnum* i.e. from the date of filing of the application to the passing of the order dated 10th April, 2018, the State Government declared its revised policy vide GR dated 15th March, 2014. Under the revised policy, the State Government decided to adopt the auction process for removal of dump irrespective of the type of holding of the concerned land where the dumps are situated. The State Government on 11th April, 2014 applied the revised policy dated 15th March, 2014 and rejected the request of Mr. Dinanath Ballal to remove the dumps as against which Appeal was filed before the Hon'ble Minister. The Hon'ble Minister noted that the application for removal of iron ore dumps was prior to the issuance of revised policy, and therefore, was required to be dealt with as per para 11(2) of the GR dated 15th March, 2014. The preface of GR dated 15th March, 2014 records that the mining reject dumps remained on the land rendering the land sterile and there is need to adopt revised policy in respect of the dumps. The GR prescribes the procedure of disposing of the dumps by way of auction. Perusal of paragraph 11(2) of GR dated 15th March, 2014 discloses that the applications which were received and pending for lifting of the dumps prior to the issuance of revised

policy to be disposed of by the Director, Geology and Mining. The State Government had taken the decision of applicability of the auction process prospectively and as the applications by Dinanath Ballal and NIMCO/Gadag Mines was pending for consideration at the time of issuance of revised policy, the applications were required to be decided as per the policy of 13th July, 1977. Mr. Khambata would rely on the decision of ***Ritu Maheshwari*** (supra), to support the contention about applicability of revised policy of 2014. The Hon'ble Apex Court has held that when regulations or scheme or policies change, applicants for their benefits have no inherent right to be considered under the old policy; rather the consideration has to be under the new regime, *unless the latter contains an express stipulation to the contrary*. The decision would in fact assist the case of Dinanath Ballal and NIMCO/Gadag Mines as the Hon'ble Apex Court has held that the consideration is required to be under new regime subject to a contrary express stipulation. In the present case, paragraph 11(2) of the GR of 2014 expressly applies the GR prospectively and applying the law enunciated by the Hon'ble Apex Court, the pendency of the applications at the time of issuance of revised policy not being disputed, the GR of 2014 would not apply for consideration of the application for lifting of dumps.

120. The rights claimed by Dinanath Ballal is premised on the permission granted in its favour by the order of 17th December, 2018

and that the power of review could not have been exercised under Section 258 of MLRC. There is no independent right claimed by Dinanath Ballal in the dump stocks. As we have held that the impugned orders including the order of 17th December, 2018 are unsustainable in law, even if the impugned order dated 14th October, 2021 is quashed and set aside, the impugned order dated 17th December, 2018 cannot be revived. The Petition filed by Dinanath Ballal accordingly stands disposed of.

121. We have minutely perused the citations tendered across the bar, however, in view of the discussion above, it is not necessary to deal individually with all the citations. The principles re-iterated therein as regards jurisdiction of this Court, delay etc cannot be disputed and it is its applicability to the present case to deny exercise of extraordinary jurisdiction, which we are not inclined to accept.

122. Redi Port Ltd in its Petition also seeks blanket prohibition restraining the State Authorities from passing any orders in respect of land bearing Survey No 15 and 58 for removal of dumps and from deleting the lands from all statements identifying iron ores/dumps. There are no submissions canvassed to support the said reliefs. The impugned orders are held to be unsustainable as they are not preceded by approval under Section 2 of Forest Act. It is open for the State Authorities to exercise its powers under Section 48 of MLRC after

obtaining prior approval under Section 2 of Forest Act.

123. In light of the above discussion, Writ Petition No. 452 of 2023 is allowed in terms of prayer clause (b) which reads as under:

(b) Issue a writ of certiorari, or any other writ, order, or direction in the nature of certiorari, calling for the records in respect of the following orders and quash and set aside the same:

(i) Order No MNG/1020/CR42/Ind-9 dated 14th October, 2021 passed by Respondent No 1-C in respect of Survey No 58.

(ii) Order No MNG/0118/CR03/Ind-9 (A) dated 17th December, 2018 passed by Respondent No 1-C in favour of Respondent No 6 in respect of Survey No 58.

(iii) Order No MNG/0118/CR03/Ind-9 (B) dated 19th September, 2019 passed by Respondent No 1-C in favour of Respondent No 6 in respect of Survey No 58.

124. In view of Writ Petition No. 452 of 2023 being partly allowed and the impugned orders including order dated 17th December, 2018 being quashed and set aside. Writ Petition No. 2031 of 2022 stands disposed of.

125. There was no appearance on behalf of the applicants in the Interim Applications seeking intervention in present proceedings. The Interim Applications stand dismissed.

126. Rule is partly made absolute in respect of Writ Petition No. 452 of 2023 in above terms.

[NEERAJ P. DHOTE, J.]

[SHARMILA U. DESHMUKH, J.]

127. Mr. Samdani, learned senior counsel for the Respondent No. 8-Gadag submits that the order of *status quo*, which is operating be continued for a period of four weeks. Considering that the *status quo* is in respect of the subject land, we are inclined to continue the order of status quo for a period of four weeks.

[NEERAJ P. DHOTE, J.]

[SHARMILA U. DESHMUKH, J.]