

BEFORE THE NATIONAL GREEN TRIBUNAL, CENTRAL ZONAL BENCH, BHOPAL

M.A. No. 129/2013

M.A. No. 161/2013

M.A. No. 162/2013

in

Original Application No. 110/2013

Smt. Salimun Khan Vs. Union of India & Ors.

CORAM : HON'BLE MR. JUSTICE DALIP SINGH, JUDICIAL MEMBER
HON'BLE MR. P.S.RAO, EXPERT MEMBER

PRESENT : Applicant : Shri R.S. Verma, Adv.
Respondent No. 1 : Shri Om S. Shrivastava, Adv.
Respondent No. 2, 6, 7 & 8 : Shri Sachin K. Verma, Adv. &
Shri Ayush Dev Bajpai, Adv.
Respondent No. 3, 5 & 6 : Shri Shivendu Joshi, Adv. &
Shri Vishal Vijayvargiya for
Shri Purushaindra Kaurav, Adv.
Respondent No. 4 : Shri Suman Mandal, Adv. for
Shri Sandeep Singh, Adv.
Respondent No. 9 & 10 : Shri Ankit Agrwal, Adv.
Shri Abhijeet A. Awasthi, Adv.

Date and Remarks	Orders of the Tribunal
<p>Order no. 5</p> <p>13th December, 2013</p>	<p><u>Miscellaneous Application No. 129/2013</u></p> <p>Miscellaneous Application No. 129/2013 has been filed on behalf of the respondent no. 10 with the prayer to delete the name of the Respondent no. 10 M/s Anand Minerals from the array of parties. As reply to the same has also been filed by the Learned Counsel for the applicant today, it is ordered to be taken on record.</p> <p><u>Miscellaneous Application No. 161/2013</u></p> <p>Miscellaneous Application No. 161/2013 has been filed on behalf of the respondent no.8 for taking certain documents on record which are the proceedings before the Hon'ble High Court of Madhya Pradesh, Principal Seat at Jabalpur pertaining to Writ Petition No. 20824 of 2011 filed by M/s Nirmala Minerals who is respondent No. 9 to the present original application.</p>

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Miscellaneous Application No. 162/2013

Misc. Application No.162/2013 has been filed by the applicant for impleading respondents no. 11 & 12 as parties.

Original Application No. 110/2013

We have heard the Learned Counsel for the parties in the original application in the light of the reply, application and documents filed on record. The applicant has prayed that the responsibility for the illegal mining being carried out by the respondent no. 9 & 10 be fixed and they be asked to deposit Rs. 500 Crores (Rupees Five Hundred Crores) equivalent to five times of the amount as a result of the damage caused to the environment on account of illegal mining activities carried by Respondents no. 9 & 10 in the protected forest area. The applicant *inter alia* has contended that the area under the mining lease of the respondent no. 9 & 10 in Villages Agariya and Dubiyara, Tehsil Sihora, District Jabalpur fall in Khasra No. 680 (old) and new Khasra nos. 1093 and & 628/1 admeasuring 20.141 and 32.371 hectares respectively.

So far as the mining lease granted to respondent no.10 is concerned though specific details of the respondent no. 10 to whom lease was originally granted have not been mentioned in the application was a part of protected forest and whether or not the area in dispute falls within the category of forest came up for consideration before the Central Empowered Committee (CEC) and they have submitted a report to that effect. The report of the CEC is under challenge before the Hon'ble High Court in Writ Petition filed by M/s Nirmala Minerals (respondent no. 9 to the original application) the mining lease holder.

In view of the reply submitted by the respondents it becomes amply clear that the question as to whether the area in dispute, as

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alleged by the applicant comprises forest land which could not have been made the subject of mining lease and / or the renewal thereof after its expiry in 2007 and the question of its deemed renewal under Rule 24 (A) of the Mineral Concession Rules, 1960 depends upon the question whether the report of the CEC is upheld and the area is considered to be falling within the category of forest and therefore in terms of the Forest Conservation Act, 1980 as well as EIA notification of the MoEF of the year 2006 and subsequent notifications, the lease could be granted / renewed depends upon the outcome of the aforesaid litigation pending before the Hon'ble High Court.

It has also been brought to our notice that the applicant simultaneously approached the Hon'ble High Court by means of application for being impleaded as party to the Writ Petition filed by the respondent no. 9.

In view of the aforesaid, we are of the view that the applicant could not be permitted to pursue both the remedy simultaneously, i.e. before this Tribunal as well as the Hon'ble High Court.

The Learned Counsel for the applicant in view of the above contended that in view of the judgement of the Hon'ble Supreme Court in the case of Bhopal Gas Peedith Mahila Udyog Sangthan Vs. Union of India, it has been made amply clear by the Hon'ble Supreme Court in para 38 and 39 of its judgement that in terms of the Section 29 of the National Green Tribunal Act, 2010 all such issues which have been raised by the respondent no. 9 in the Writ Petition can be considered only by the National Green Tribunal notwithstanding the fact that the petition before the Hon'ble High Court may have been pending prior to the coming into force of the National Green Tribunal Act, 2010 or filed after its formation in

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2011 and such cases are required to be transferred to the National Green Tribunal by the Hon'ble High Court.

We have considered the aforesaid submissions. We are of the view that this is a matter which has been brought by the applicant or any of the parties to the notice of the Hon'ble High Court which shall take a decision on the submissions in accordance with law. In view of the above, the Learned Counsel for the applicant seeks leave of this court to withdraw the present application and pursue the matter before the Hon'ble High Court in the matter of M/s Nirmala Minerals Vs. State of M.P. & Others pending in Writ Petition No. 20824/2011. Accordingly the prayer made by the Learned Counsel for the applicant seeking leave of the Tribunal to withdraw this application with liberty to approach the Hon'ble High Court which the applicant has already been done by means of interim application for leave to be permitted to intervene, is allowed and this original application no. 110/2013 accordingly is disposed of as withdrawn with liberty as aforesaid.

In view of the above Misc. Application No. 129/2013, 161/2013 & 162/2013 also stands disposed of.

.....JM
(DALIP SINGH)

.....EM
(P.S.RAO)