



2026:AHC:15444-DB

HIGH COURT OF JUDICATURE AT ALLAHABAD

WRIT – C No. -14386 of 2019

AFR

Reserved on 24.09.2025

Delivered on 21.01.2026

M/S Sharad Enterprises

.....Petitioners(s)

Versus

State Of U.P. And 4
Others

.....Respondents(s)

Counsel for Petitioners(s)	: Adarsh Bhushan, Shri Ashok Khare (Senior Advocate)
Counsel for Respondent(s)	: C.S.C.

HON'BLE SARAL SRIVASTAVA, J.
HON'BLE AMITABH KUMAR RAI, J.

(Delivered by Hon'ble Saral Srivastava, J)

1. Heard learned counsel for the petitioner and Sri Rajeshwar Tripathi, learned Chief Standing Counsel-II for the State-respondents.
2. The petitioner by means of the present writ petition has prayed mainly for the following relief:-

“i. Issue a writ, order or direction in the nature of certiorari, quashing the impugned order dated 29.12.2018, only to the extent of forfeiture of the security amount of Rs. 8,51,68,215/- passed by Respondent no.3 and

quashing the impugned recovery Certificate dated 14.01.2019 issued by the District Magistrate, Jalaun and impugned recovery Citation dated 23.01.2019 issued by the Tehsildar, Jhansi and to further to quash impugned Revisional order dated 12.03.2019 passed by Respondent no.2.

ii. Issue a writ, order or direction in the nature of mandamus directing the respondents to adjust the security deposit of Rs. 8,51,68,215/- towards unpaid quarterly lease amount/installments.

iii. Issue a writ order or direction in the nature of mandamus of directing the respondents to refund the amount of Rs.2,00,00000/- (Rs. Two Crore) forcefully taken from the petitioner in pursuance of the impugned recovery certificate and citation, along with the 18% interest.”

3. The facts, in brief, are that as per the Government Policy-2017, a Government Order for settlement of leases under Chapter-IV by E-Tender/E-Auction dated 14.08.2017 was issued. The mining leases were to be granted as per the procedure prescribed under the Government Order dated 14.08.2017. The District Magistrate, Jalaun published an E-Tender notice dated 16.11.2017 for settlement of mining leases of sand and morang under U.P. Minor Minerals (Concession) Rules, 1963 (hereinafter referred to as the ‘Rules, 1963’) in District Jalaun for several mining blocks.

4. The petitioner pursuant to the aforesaid E-Tender notice submitted an online application on MSTC Portal for grant of mining lease in Village-Himanpura, Tehsil-Kaalpi, Khand No.2, measuring 20.242 hectares for a quantity of 03,03,630 cubic meters. The reserve price for the area applied by the petitioner was Rs.150/- per cubic meter. The petitioner gave bid of Rs.1122/- cubic meter as against the reserve price of Rs.150/- per cubic meter. The petitioner’s bid was found to be the highest bid. Consequently, the same was accepted by the respondents.

5. The respondent no.3-District Magistrate, Jalaun issued a Letter of Intent (hereinafter referred to as 'LOI') in favour of the petitioner for grant of mining lease in respect to the aforesaid area. The LOI was issued to the petitioner for a quantity of 03,03,630 cubic meters in an area of 20.242 hectares and the annual lease amount which the petitioner was to pay was Rs.34,06,72,860/-.

6. The petitioner after receiving the LOI deposited the requisite amount, namely, security money and first installment of the annual lease amount and applied for the mining plan. After obtaining the mining plan, the petitioner applied for Environment Clearance Certificate which was granted to the petitioner by the State Environmental Impact Assessment Authority (hereinafter referred to as 'SEIAA'). Thereafter, the lease deed dated 04.04.2018 was executed in favour of the petitioner for a period of five years commencing from 04.04.2018 to 03.04.2023.

7. The further case of the petitioner was that as per the policy of the State Government, the mining operation was prohibited from 01.07.2018 to 30.09.2018 during monsoon season. After the monsoon season, respondent no.3 issued a notice on 01.10.2018 under Rule 58 (2) of the Rules, 1963 stating therein that if third quarterly installment of the lease amount which was due upon the petitioner on 01.10.2018 was not paid within time, the same would be recovered along with interest.

8. The petitioner further stated that after the monsoon season, when he tried to restart the mining operation, he found that the entire lease area was submerged into the river and no mining was possible. Since there is prohibition in Rule 41-H (1) of Rules, 1963 of mining in the water level, therefore, under such compelling circumstances, the petitioner submitted a representation dated 23.10.2018 for cancellation/surrender of mining lease. The petitioner further stated that

when the respondent no.3 did not pay any heed to the representation of the petitioner, he submitted representation dated 05.12.2018 to the Director, Geology and Mining, and another representation dated 10.12.2018 to the State Government praying therein to inspect the mining lease area and revise the annual quantity of mineral.

9. The petitioner submitted another representation on 29.12.2018 to the respondent no.3 for making a spot inspection and assessing the quantity of mineral, but respondent no.3 did not pay any heed to the said representation.

10. The respondent no.3 vide order dated 29.12.2018 cancelled the mining lease of the petitioner under Rule 58 of the Rules, 1963 and forfeited the security deposit of Rs.8,51,68,215/- on the ground of non-deposit of third quarterly installment of the lease amount treating the same as breach of lease condition.

11. The petitioner, thereafter, preferred Revision No.08 (R)/V.S.M. of 2019 against the order dated 29.12.2018 which was dismissed by the Revisional Authority vide order dated 12.03.2019.

12. The forfeiture of security amount has been assailed by the petitioner with other prayers which have been extracted above on various grounds which shall be noted at the appropriate stage.

13. The respondent-State has filed counter affidavit contending *inter alia* that there was specific condition in the advertisement dated 16.11.2017 that before participating in E-Tender-cum-E-Auction proceeding, the bidder himself may inspect the mining area about the availability of the estimated quantity of mineral and approach road to the mining area. No representation about the non-availability of mineral would be entertained after participating in E-Tender-cum-E-Auction

proceeding. According to the respondent, the petitioner as per terms and conditions of the advertisement after fully satisfying himself about the availability of the estimated quantity of mineral and approach road, participated in E-Tender-cum-E-Auction proceeding and submitted the bid of Rs.1122/- per cubic meter. Since, the petitioner was the highest bidder, therefore, his bid was accepted and LOI dated 27.01.2018 was issued to him.

14. The further case of the respondent is that the petitioner got prepared the draft mining plan through expert as per Rule 34 of the Rules, 1963 and submitted the same for approval before the Director, Geology and Mining, U.P. It is stated by the respondent that while preparing the draft mining plan, the petitioner and his expert to whom the petitioner entrusted the work of preparation of draft mining plan again inspected the area. It is further stated that in the draft mining plan, the entire details with regard to the availability of mineral in mining area and method of mining and closure of mining was mentioned by the petitioner himself. Accordingly, the mining plan submitted by the petitioner was approved on 09.12.2018. The petitioner, thereafter, got prepared the draft proposal for presentation of the same before the SEIAA to get the Environment Clearance Certificate from the SEIAA which was issued to the petitioner on 31.03.2018.

15. As per the case of the respondent, the petitioner got inspected the area thrice before executing mining lease; before participating in E-Tender-cum-E-Auction proceeding as per the condition mentioned in the advertisement; secondly, while preparing the draft mining plan; thirdly, while preparing the draft proposal for Environment Clearance Certificate. It is stated that after completing the entire procedure, the

mining lease was got registered on 04.04.2018 for a period of five years from 04.04.2018 to 03.04.2023.

16. The further case of the respondent is that the lease deed contained the terms and conditions and the consequences for violation of the terms and conditions. The petitioner with open eyes accepted the terms and conditions of the mining lease and executed a registered contract/mining lease voluntarily.

17. According to the respondent, Part-2 of the mining lease related to Schedule of payment of royalty/installment which has been as per the provisions of Rule 27 and Schedule-IV of Rules, 1963. Part-3 of the mining lease is related to the general condition and additional condition. The general condition no.1 specifically provides that on violation of any Rule of Rules, 1963 or covenant and condition of mining lease, the mining lease may be determined and the security deposit may be forfeited wholly or in part. The specific case of the respondent is that there is no specific condition in the mining lease for adjustment of the amount of security if the decision for determination of lease is taken as per Part-3 of Clause-1 of mining lease.

18. The respondent states that since the petitioner had violated the terms and conditions of the mining lease as well as provisions of Rules, 1963 and did not deposit the royalty as per the agreed schedule for payment, the petitioner's security amount was liable to be forfeited under the terms and conditions of the mining lease.

19. It is also the case of the respondent that the petitioner violated the provision of Rules, 1963 since he excavated the mineral and had done mining without depositing the royalty and other amount like DMF

(District Mineral Foundation Trust Fund), TCS etc. The petitioner was also involved in illegal mining for which action had been taken.

20. The respondent also stated that it is stipulated in the lease deed that the consequence of non-deposit of installment is forfeiture of security deposit. The respondent denied the fact that security deposit is liable to be adjusted towards unpaid installment.

21. It is also stated that due to determination of mining lease in mid term because of the fault of lessee and in not closing the mining as per the mining closure plan, the State has to suffer huge loss since fresh grant takes considerable time, therefore, specific provision has been made in mining lease for forfeiture of security deposit, and petitioner has agreed upon the said terms and conditions. The respondent in reply to the averments made by the petitioner that in several districts, the District Magistrates have adjusted the security amount towards installment has stated that it was done by the District Magistrate of the concerned district on their own discretion, but the said benefit cannot be extended to the petitioner in view of stipulation contained in the mining lease.

22. The petitioner filed rejoinder affidavit denying the averments contained in the counter affidavit. The petitioner again reiterated that the respondent has no power to forfeit the security.

23. Challenging the order of forfeiture of security, learned counsel for the petitioner has contended that respondent no.3 is not conferred with the power of forfeiture of security under The Mines and Minerals (Development and Regulation) Act, 1957 (hereinafter referred to as 'MMDR Act') or Rules, 1963, therefore, the forfeiture of security by the respondent no.3 is illegal and beyond jurisdiction.

24. He further submits that the respondent no.3 has erroneously treated the non-deposit of royalty/lease amount as violation of terms and conditions of the lease deed by the petitioner inasmuch as consequence of non-deposit of lease amount/royalty in time has been provided under Rule 58 of Rules, 1963, condition no.3 of Part-2 of the lease deed dated 04.04.2018 and Clause 19(3) of the Government Order dated 14.08.2017 which provides realization of the said amount as arrears of land revenue along with interest prescribed.

25. In other words, learned counsel for the petitioner submits that since Rule 58 of the Rules, 1963, condition no.3 of Part-2 of the lease deed dated 04.04.2018 and clause 19(3) of the Government Order dated 14.08.2017 do not provide for forfeiture of security in case of non-deposit of lease amount/royalty in time, therefore, respondent no.3 does not have any jurisdiction to forfeit the security treating the non-deposit of installment of royalty in time as a violation of terms and conditions of the lease deed, and respondent no.3 can recover the said amount only as arrears of land revenue along with interest.

26. It is further contended that payment of installment is provided under Part-2 of the lease deed which stipulates that royalty of removed sand/morang shall be payable as per provision contained in First Scheduled of the Rules, 1963. Therefore, non-deposit of third quarterly installment does not constitute violation of any rule or condition of the lease deed.

27. It is further contended that non-payment of third installment would have been a violation of terms and conditions of lease deed if the petitioner had removed the mineral after 01.10.2018 from the site allotted under the lease deed, therefore, non-payment of third installment is not a violation of any condition as payment of installment is linked

with the removal of mineral as provided under Clause-1 of Part-2 and Section 15(3) of the MMDR Act. According to the learned counsel for the petitioner, clause-1 of Part-2 of the lease deed finds its statutory backing under Section 15(3) of MMDR Act and thus, the action of the respondent in forfeiting the security is illegal and arbitrary.

28. It is further contended that the respondent no.3 has not given any show cause notice to the petitioner before forfeiting the security or cancelling the mining lease as provided under the aforesaid condition of the lease deed nor any opportunity of hearing was afforded to the petitioner, therefore, respondent no.3 has wrongly placed reliance upon the aforesaid clause of lease deed for forfeiting the security. It is contended that the action had been taken by the respondent no.3 under Rule 58(1) of the Rules, 1963 for non-deposit of quarterly installment of the lease, consequence of which has been provided in Rule 58(2) of the Rules, 1963.

29. He further contends that Rule 29 of Rules, 1963 contemplates forfeiture of security deposit if the conditions enumerated under Rule 29 are present. To elaborate the said argument, he submits that if lessee does not get the lease deed registered within three months, then in such an event, the lease deed shall be treated null and void and the security money deposited by the lessee shall be forfeited, but in the present case no contingency as contemplated under Rule 29 of the Rules, 1963 for forfeiting the security is present.

30. It is further submitted that if for the sake of argument, it is accepted that security may be forfeited, such action would render Rule 50 of Rules, 1963 redundant which provides for refund of security deposit on determination of lease deed.

31. It is also contended that the reading of Clause-1 of Part-3 of the lease deed gives a discretion to the authority to forfeit the security deposit in part or full and as a matter of principle whenever a discretion is to be exercised that must be supported by reason, and since in the instant case, the forfeiture of entire security is not supported by any reason, therefore, forfeiture of security is bad.

32. Per contra, learned Chief Standing Counsel-II would contend that perusal of Rule 58 of Rules, 1963 discloses that the aforesaid provision is inclusive in nature enumerating certain consequences of non-payment of royalty. He submits that in Rule 58(1) of Rules, 1963, the legislature has mentioned that *“this right shall be in addition to and without prejudice to the right of the State Government to realise such dues”* reveals the intention of the legislature that the aforesaid provision is in addition to the other consequences of non-payment of royalty. Accordingly, it is contended that forfeiture of security money in case of failure to deposit of royalty on due date is in conformity with the terms and conditions of lease deed, and the same shall be valid, more so, when petitioner knowing well about the said condition in the lease deed voluntarily without any objection executed the mining lease deed and got it registered.

33. He further submits that Clause-1 of Part-3 of the lease deed is explicit and stipulates that in case of violation of condition of lease deed, security money can be forfeited. He submits that lease deed is executed in the form MM-6 in Schedule 3 of Rules, 1963 as per Rule 29 of Rules, 1963, and this condition of lease deed has been specifically enumerated in form MM-6, therefore, forfeiture of security money on account of violation of terms and conditions of lease deed has a statutory force

under Rules, 1963. Accordingly, he submits that it is wrong to contend that respondent no.3 does not have any power to forfeit the security.

34. He submits that the mode and date of payment of installment is enumerated under the lease deed which binds the petitioner to pay the installment on the date stipulated in the lease deed, and if any violation in payment of installment on the date fixed in the lease deed is breached, that would amount to violation of terms and conditions of lease deed. Therefore, respondent no.3 has rightly invoked clause of forfeiture of security money under the lease deed treating it to be violation of terms and conditions of lease deed.

35. He further submits that though Rule 58(1) of Rules, 1963 or Clause 19(3) of the Government Order dated 14.08.2017 does not specifically provides for forfeiture of security, but neither MMDR Act nor Rules, 1963 nor the Government Order dated 14.08.2017 prohibits the State from forfeiting the security in the event of breach of terms and conditions of lease, and once, petitioner voluntarily knowing the said stipulation in the lease deed accepted the terms and conditions of the lease deed, the petitioner is bound by the terms and conditions of the lease deed and cannot turn around and challenge the forfeiture of security at this stage. Accordingly, it is submitted that respondent no.3 has rightly forfeited the security money of the petitioner.

36. He further submits that contention of learned counsel for the petitioner that in view of Section 15(3) of the MMDR Act, royalty can be charged only in respect of mineral removed is misconceived inasmuch as language employed in sub-section (3) of Section 15 of MMDR Act does not suggest any such intention of the legislature that royalty can be charged only in respect of mineral removed. He further submits that had it been the intention of the legislature, the word 'only'

would have been incorporated before the word 'in respect of minor mineral removed or consumed' in Section 15(3) of the MMDR Act, whereas no such word has been incorporated in Section 15(3) before the word 'in respect of minor mineral removed or consumed.'.

37. He further submits that once petitioner has entered into a contractual obligation by executing a registered lease deed wherein installment of royalty and its due date has been incorporated in the lease deed, the petitioner subsequently after entering into the contract through lease deed cannot deviate from the terms and conditions of the lease deed as the obligation incurred under the lease deed is binding upon the parties. It is further contended that purpose of making penal provision of forfeiture of security money is to ensure that leaseholder does not run away from the contractual obligations as per his own whims. Thus, he submits that provision of forfeiture under lease deed has been incorporated with an object that in case lessee violates the terms and conditions of lease deed which lead to termination of lease deed, in that case, loss of revenue likely to be caused due to non-operation of mining can be compensated because after termination of the lease deed, sufficient time is required for executing new lease deed in respect of area declared vacant because of termination of lease deed.

38. We have considered the rival submissions advanced by the learned counsel for the parties and perused the record.

39. The undisputed facts, as emanate from the record, are that in pursuance to an advertisement published by respondent no.3 inviting application for grant of lease for sand and morang, the petitioner submitted application for carrying mining operation for the area measuring 20.242 hectares for quantity of 03,03,630 cubic meters.

40. After complying with all the requirements, a registered lease deed dated 04.04.2018 was executed between the petitioner and respondent-State for excavating sand and morang. As the petitioner could not deposit the third quarterly installment on time, therefore, lease of the petitioner was terminated by order dated 29.12.2018 and security of the petitioner was forfeited, and recovery for third installment was issued against the petitioner which was challenged by the petitioner in Revision No.08 (R)/V.S.M. of 2019 which was also dismissed.

41. Since, the controversy in the instant case revolves around terms and conditions of lease deed dated 04.04.2018 executed between petitioner and respondent-State, therefore, it would be apt to reproduce relevant condition of lease deed dated 04.04.2018:-

"उत्तर प्रदेश उपखनिज (परिहार) नियमावली-1963 जिसे आगे "उक्त नियमावली" कहा गया है के अनुसार किये गये ई-निविदा सह ई-नीलामी में 303630 घनमीटर (प्रतिवर्ष) बालू/मोरम के लिये पट्टेदार द्वारा रु0 1122.00 प्रति घनमीटर की दर से प्रथम वर्ष हेतु रु० 34,06,72,860-00 तथा अनुवर्ती वर्षों में गत वर्ष की देय धनराशि पर 10 प्रतिशत वृद्धि करके देय होगा। राज्य सरकार द्वारा खनन पट्टे के लिये 5 वर्ष के निमित्त एतद्धीन लिखित अनुसूची के भाग-1 में वर्णित भूमि ग्राम-हिमनपुरा के गाटा संख्या-240 खण्ड संख्या-2 रकबा-20.242 है० के लिये स्वीकार कर लिया गया है और उन्होंने प्रतिभूति स्वरूप राज्य सरकार के पास रु0 8,51,68,215-00 की धनराशि जमा कर दी है।

यह इस बात का साक्ष्य है कि इस उपस्थापन पत्र और निम्नलिखित अनुसूची द्वारा रक्षित और उसमें दिये गये और पट्टेदार की ओर से भुगतान किये जाने वाले पालन तथा सम्पादन किये जाने वाले, स्वामित्वों, प्रसंविदाओं तथा अनुबन्धों के प्रतिफल में राज्य सरकार एतद्वारा पट्टेदार को निम्नलिखित प्रदान और पट्टात्तरित करता है। बेतवा नदी में उपलब्ध बालू/मोरम, जिन्हें आगे अभिदिष्ट अनुसूची में "उक्तः" "खनिज" कहा गया है की समस्त खान, तल्प (Beds), संदर सीम्स (Viens seams) जो अनुसूची के भाग-1 में अभिदिष्ट भूमि में या उसके नीचे स्थित हो, के साथ, जिसके सम्बन्ध में उन प्रतिबन्धों तथा शर्तों के अधीन रहते हुए प्रयोग या उपयोग किया जायेगा, जो ऐसी स्वतन्त्रताओं,

अधिकारों तथा विशेषाधिकारों का प्रयोग तथा उपयोग करने के बारे में हो सिवाय इसके और इसमें से आरक्षित उक्त नियमावली में उल्लिखित स्वतन्त्रताओं, अधिकार तथा विशेषाधिकार राज्य सरकार में पट्टान्तरित हो जायेंगे।

दिनांक 04/04/18 से दिनांक 03/04/23 तक 05 वर्ष की आगामी अवधि के लिए पट्टेदार को एतद्वारा दिये गये और पट्टान्तरित ऐसे भू-गृहादि धारण करना, जिनसे खनिज निकलने लगे और राज्य सरकार को उक्त अनुसूची के भाग-2 में उल्लिखित स्वामित्वों का भुगतान उसमें निर्दिष्ट भिन्न-भिन्न समयों पर होने लगे किन्तु प्रतिबन्ध यह है कि ऐसा उक्त भाग के उपबन्धों के अधीन हो और पट्टेदार एतद्वारा राज्य सरकार के साथ प्रसंविदा करता है और राज्य सरकार एतद्वारा पट्टेदार के साथ प्रसंविदा करती है, जैसा कि उक्त नियमावली में अभिव्यक्ति है और एतद्वारा इसके साथ दिये गये पक्षों के बीच परस्पर सहमत हुआ है और जैसा कि उक्त अनुसूची के भाग 3 में अभिव्यक्ति है।

ऊपर अभिदिष्ट अनुसूची
भाग-1
इस पट्टे का क्षेत्र

पट्टे का स्थान और क्षेत्र-वह समस्त भू-खण्ड जो जनपद-जालौन तहसील-कालपी, और थाना कदौरा के अन्तर्गत स्थान ग्राम-हिमनपुरा के गाटा संख्या-240 खण्ड संख्या-2 रकबा-20.242 हे० जो इसके साथ संलग्न नक्शे में चिन्हित है और उसे लाल रंग से रंजित (Colourd) किया गया है और जिसकी सीमायें तथा अक्षांश व देशान्तर निम्नलिखित हैं:-

खण्ड संख्या-2	उत्तर- गाटा सं० 79, 84, 85, 93 दक्षिण- गाटा सं० 256, 257, 258, 259, 260, 261, 262, 263, 264 बाद बेतवानदी सीमा जनपद हमीरपुर पूर्व- सीमा खण्ड सं०-01 पश्चिम- सीमा खण्ड सं०-03 (A) N-25° 51.51.33" E-79° 47'49.56" (B) N-25° 51'58.31" E-79° 48'8.54" (C) N-25° 52'10.14" E-79° 48'0.93" (D) N-25° 52'6.77" E-79° 47'50.48"
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और जिसे एतद्वारा "उक्त भूखण्ड" कहा गया है।

भाग-2
इस पट्टे द्वारा संरक्षित स्वामित्व

1. स्वामित्व की धनराशि: पट्टेदार इस पट्टे की अवधि में राज्य सरकार को पट्टे पर दिये गये क्षेत्र में उसके द्वारा हटाये गये सभी बालू/मोरम के सम्बन्ध में नियमावली के चतुर्थ अनुसूची में दी गयी व्यवस्था के अनुसार निम्नानुसार स्वामित्व का भुगतान करेगा।

देय धनराशियों के जमा करने की अनुसूची

क्र० सं०	पट्टा वर्ष	गद	देय धनराशि (रु० में)	देय तिथि
1.	प्रथम वर्ष	प्रथम किश्त (25%)	8,51,68,215.00	अग्रिम जमा
2.	"	द्वितीय किश्त (25%)	8,51,68,215.00	01.07.2018
3.	"	तृतीय किश्त (25%)	8,51,68,215.00	01.10.2018
4.	"	चतुर्थ किश्त (25%)	8,51,68,215.00	01.01.2019
5.	प्रतिभूति छोड़कर प्रथम वर्ष में देय धनराशियों का योग		34,06,72,860.00	
6.	द्वितीय वर्ष	प्रथम किश्त (25%)	9,38,85,037.00	01.04.2019
7.		द्वितीय किश्त (25%)	9,38,85,037.00	01.07.2019
8.		तृतीय किश्त (25%)	9,38,85,036.00	01.10.2019
9.		चतुर्थ किश्त (25%)	9,38,85,036.00	01.01.2020
10.	द्वितीय वर्ष में देय धनराशियों का योग		37,47,40,146.00	
11.	तृतीय वर्ष	प्रथम किश्त (25%)	10,30,53,540.00	01.04.2020
12.		द्वितीय किश्त (25%)	10,30,53,540.00	01.07.2020
13.		तृतीय किश्त (25%)	10,30,53,540.00	01.10.2020
14.		चतुर्थ किश्त (25%)	10,30,53,541.00	01.01.2021
15.	तृतीय वर्ष में देय धनराशियों का योग		41,22,14,161.00	

16.	चतुर्थ वर्ष	प्रथम किश्त (25%)	11, 33, 58, 894.00	01.04.2021
17.		द्वितीय किश्त (25%)	11, 33, 58, 894.00	01.07.2021
18.		तृतीय किश्त (25%)	11, 33, 58, 894.00	01.10.2021
19.		चतुर्थ किश्त (25%)	11, 33, 58, 895.00	01.01.2022
20.	चतुर्थ वर्ष में देय धनराशियों का योग		45, 34, 35, 577.00	
21.	पंचम वर्ष	प्रथम किश्त (25%)	12, 46, 94, 784.00	01.04.2022
22.		द्वितीय किश्त (25%)	12, 46, 94, 784.00	01.07.2022
23.		तृतीय किश्त (25%)	12, 46, 94, 784.00	01.10.2022
24.		चतुर्थ किश्त (25%)	12, 46, 94, 783.00	01.01.2023
25.	पंचम वर्ष में देय धनराशियों का योग		49, 87, 79, 135.00	
26.	प्रतिभूति छोड़कर पाँच वर्षों में देय धनराशियों का योग		2, 07, 98, 41, 879.00	

2. स्वामित्व कटौती आदि से मुक्त होगा: इस भाग में उल्लिखित स्वामित्व की किश्तों का भुगतान बिना किसी कटौतियों के राज्य सरकार को निर्धारित लेखा शीर्षक "0853 अलौह खनन एवं धातु कर्म उद्योग" पर सरकारी कोषागार में जमा करके किया जायेगा तथा चालान की एक प्रति जिलाधिकारी को भेजी जायेगी।

3. स्वामित्व का समय पर भुगतान न किया जाये तो कार्यवाही की प्रक्रिया: यदि इस उपस्थापना पत्र (Presents) की शर्तों और प्रतिबन्धों के अधीन राज्य सरकार को देय स्वामित्व की किसी किश्त का भुगतान पट्टेदार द्वारा नियत समय के भीतर न किया जाये, तो उसे ऐसे अधिकारी के जिसे राज्य सरकार सामान्य या विशिष्ट आज्ञा द्वारा निर्दिष्ट करे, प्रमाण पत्र पर उसी रीति से वसूल की जा सकती है, जैसे मालगुजारी का बकाया।

भाग 3

सामान्य उपबन्ध

1. नियमों, प्रसंविदाओं और शर्तों को भंग करने पर पट्टा समाप्त किया जा सकता है: यदि पट्टेदार उत्तर प्रदेश उप खनिज (परिहार) नियमावली 1963 के किसी नियम या इस पट्टे की किसी प्रसंविदा तथा किसी शर्त को भंग करें तो राज्य सरकार पट्टा समाप्त कर

सकती है और प्रतिभूति जमा को पूर्णतः या अंशतः जब्त कर सकती है किन्तु प्रतिबन्ध यह है कि पट्टा समाप्त किये जाने के पूर्व पट्टेदार को उन्हें भंग करने का स्पष्टीकरण देने के लिए यथोचित अवसर दिया जायेगा।

42. Para 8 of the additional condition of lease deed is also relevant in the present case, therefore, the same is also being reproduced below:-

“8. यदि पट्टेदार द्वारा नियमों व खनन पट्टा, पर्यावरण स्वच्छता प्रमाण-पत्र खनन योजना, लेटर आफ इंटेन्ट आदि की शर्तों का उल्लंघन किया जाता है तो पट्टेदार को अपना मामला बताने की युक्ति युक्त अवसर प्रदान करने के पश्चात् जिलाधिकारी अथवा राज्य सरकार द्वारा पट्टा समाप्त किया जा सकता है।”

43. Learned counsel for the petitioner in order to support his argument that there is no provision under the MMDR Act or Rules, 1963 or Government Order dated 14.08.2017 which confers power upon the respondent no.3 to forfeit the security if the installment of royalty has not been paid in time has relied upon the Clause-1 of Part-3 of the general condition mentioned in the lease deed dated 04.04.2018 which has already been extracted above. He has also placed Rule 58 of Rules, 1963 and paragraph 19(3) of the Government Order dated 14.08.2017.

44. For convenience Rule 58 of Rules, 1963 is reproduced herein below:-

“58. Consequences of non-payment of royalty, rent or other dues.-

(1) The State Government or any officer authorised by it in this behalf may determine the mining lease after serving a notice on the lessee to pay within thirty days of the receipt of the notice any amount due or dead rent under the lease including the royalty due to the State Government if it was not paid within fifteen days next after the date of fixed for such payment. This right shall be in addition to and without

prejudice to the right of the State Government to realise such dues from the lessee as arrears of land revenue.

(2) Without prejudice to the provisions of these rules, simple interest at the rate of 18 percent per annum may be charged on any rent, royalty, demarcation fee and any other dues under these rules, due to the State Government after the expiry of the period of the notice under sub-rule (1).

45. Para 19(3) of the Government Order dated 14.08.2017 is also being reproduced herein below:-

"19-सफल बोलीदाता/निविदादाता द्वारा धनराशि जमा करने की रीति -

(3) प्रथम वर्ष के लिए शेष 75 प्रतिशत पट्टा धनराशि एवं आगामी वर्षों के लिए पट्टा धनराशि नियमावली में निर्धारित चतुर्थ अनुसूची के अनुसार राज्य सरकार द्वारा समय समय पर निर्धारित प्रक्रिया के अनुसार पट्टाधारक द्वारा जमा की जायेगी। उक्त अनुसूची में नियत तिथि के अनुसार देय धनराशि जमा न करने की दशा में नियम-59 के अनुसार देय धनराशि ब्याज सहित वसूल की जायेगी।"

(Note:- It appears that 'Rule 59' has been incorrectly typed in para 19(3) of the Government Order dated 14.08.2017 instead of 'Rule 58' since Rule 59 does not deal with the matter related to non-payment of lease amount or royalty.)

46. According to Rule 58 (1) of Rules, 1963, if the lessee does not pay the royalty in time, the State Government or any officer authorised by it in this behalf may determine mining or auction lease after serving a notice on the lessee to pay within thirty days of the receipt of the notice, any amount due or dead rent under the lease including royalty due to the State Government if it was not paid within fifteen days next after the date fixed for such payment.

47. The Rule 58(1) of Rules, 1963 further provides that this right shall be in addition to and without prejudice to the right of the State Government to realise such dues from the lessee as arrears of land revenue. Reading of Rule 58 (1) of the Rules, 1963 clarifies that the power conferred upon the State Government or any officer authorised by it in this behalf under Rule 58 to terminate the lease is an additional and independent right conferred upon the State Government or any authority authorised by it in this behalf without influencing or impacting the right of the State to recover the amount of royalty as arrears of land revenue.

48. Learned counsel for the petitioner in support of his aforesaid argument that neither Rule 58 of Rules, 1963 nor Clause 19(3) of the Government Order dated 14.08.2017 gives power to the State Government to forfeit the security has relied upon the judgement of this Court in the case of *Ajay Raj Dwivedi Vs. State of U.P. and Others* passed in Writ-C No.13569 of 2019 and *Smt. Kalpana Karwariya Vs. State of U.P. and Others* passed in Writ-C No.28355 of 2021.

49. In the case of *Ajay Raj Dwivedi (supra)*, the petitioner assailed the order by which recovery was issued against the petitioner and lease deed was cancelled. The petitioner's firm was blacklisted and the security amount deposited by the petitioner was forfeited.

50. This Court held that recovery sought against the petitioner and cancellation of lease deed was bad for violation of principles of natural justice. This Court further held that blacklisting of the petitioner's firm was also bad as nothing has been stated in the show cause notice regarding blacklisting of the petitioner's firm nor anything has been stated regarding forfeiting the security money deposited by the petitioner. This Court further by placing reliance upon the Rule 58 of Rules, 1963 and Clause 19(3) of the Government Order dated

14.08.2017 concluded that since the aforesaid provision does not provide for forfeiture of security in case of non-deposit of the installment, therefore, security amount deposited by the lessee/petitioner could not be forfeited. Relevant extract of the judgement in case of **Ajay Raj Dwivedi (supra)** is reproduced herein below:-

“In our view, as per Rule 58 of the Rules, 1963 and Clause 19(3) of the Government Order dated 14.08.2017 which clearly says that if the lessee will not pay the royalty or dead rent then after giving the notice the lease shall be determined and the said amount shall be realized as arrears of land revenue along with interest prescribed under sub-rule (2), as such while passing the order under Rule 58 of the Rules 1963 for cancellation of lease deed, security amount deposited by the lessee/petitioner could not be forfeited. In this regard, Rule 58 of the Rules, 1963 is being quoted below:-

58. Consequences of non payment of royalty, rent or other dues:

.....

Similarly as per the Government Order dated 14.08.2017 the consequence of non deposit of the lease amount/royalty in time by the lessee has been clearly provided in Clause 19(3) of which clearly says that if the lease amount will be not deposited by the lessee within time then same shall be recovered along with the interest as provided under the Rule 58 of the Rules 1963 and the forfeiture of the security money has not been permitted in the said Government Order on the ground of non deposition the lease amount.

It is further observed that in the impugned order, the District Magistrate, Chitrakoot has treated the non deposit of the royalty/lease amount in time as violation of the condition of the lease deed and rule by the petitioner which is absolutely baseless as consequences of the non deposition of the lease amount/royalty in time has been provided under Rule 58 of the Rules 1963 and Clause 19(3) of the Government Order dated 14.08.2017 which does not permit the forfeiture of the security money deposited by the lessee/petitioner and only provided the realization of the said amount as arrears

of the land revenue along with the interest prescribed. Security amount deposited by the petitioner was liable to be adjusted towards the dues/liability fixed upon the petitioner after the cancellation of the lease deed vide order dated 21.06.2019.”

51. In the other judgement of this Court is **Smt. Kalpana Karwariya (supra)**, the question which arose for consideration before the Court was whether the security money which had been deposited at the time of grant of lease under Rules, 1963 could be forfeited when a lease was determined for the non-payment of royalty, rent or other dues. This Court after referring to Rule 58 of Rules, 1963, Clause 19(3) of the Government Order dated 14.08.2017, Rule 59 of the Rules, 1963 held the forfeiture of security is bad in law. Paragraph nos.13 to 15 of the said judgement are being reproduced herein below:-

“13. Having heard Sri Mukesh Prasad, learned Senior Advocate assisted by Sri Suraj Singh, learned counsel for the petitioner and the learned Additional Chief Standing Counsel, we are of the view that when the petitioner had not paid the fourth installment of the first year then that amount alongwith the TDS amount payable and the amount payable towards the District Mineral Foundation Trust Fund could be recovered only as arrears of land revenue. A composite reading of Rules 58, 59 and 60 of the 1963 Rules, definitely makes it clear that if a particular royalty or any other due under the lease was not paid then in addition to the determination of lease, the amount which was payable by the petitioner to the Government could be recovered only as arrears of land revenue. However, if there was any penalty for non-compliance of any of the many rules or if there was violation of any lease condition except those relating to payment of royalty, rent or other dues, the State Government could determine the lease and could also impose a penalty under Rules 59 and 60 of forfeiting the security. Definitely, the provisions of Rule 58 stand apart from the provisions of Rules 59 and 60 of the 1963 Rules.

14. Rule 58 is only with regard to the consequences of non-payment of royalty, rent or other dues. Rule 59 is with regard to the contravention of

certain conditions wherein penalty could be imposed and that penalty, if not paid, could be deducted by the District Magistrate from the security money deposited by the lessee. Rule 60 was with regard to the breach or contravention by a lessee of any of the Rules of 1963 Rules or conditions and covenant contained therein except those relating to payment of royalty, rent or other sums due.

15. Under such circumstances, this Court is definitely of the view that the confiscation/forfeiture of royalty by the three impugned orders namely the order dated 25.03.2019 of the Additional District Magistrate (F&R); the order dated 16.07.2021 of the Appellate Court and the order dated 20.09.2021 of the Revisional Court cannot be sustained in the eyes of law. The amount which was due from the petitioner could have been recovered only as arrears of land revenue. However, since the petitioner had given an offer that the money which was due from the petitioner i.e. the fourth installment of the first year and other statutory dues be recovered from the security amount, it is being provided that these amounts can be recovered from the security money of Rs. 1,74,00,000/- which was deposited by the petitioner before the execution of the lease. The rest of the amount of the security be released to the petitioner forthwith.”

52. So far as the two judgements ***Ajay Raj Dwivedi (supra)*** and ***Smt. Kalpana Karwariya (supra)*** are concerned, the Court after considering Rule 58 and Clause 19(3) of the Government Order dated 14.08.2017 which provide for consequences of non-payment of any amount which includes the royalty held that since these provisions do not provide for forfeiture of security in the event of failure of payment of any amount due from the lessee including royalty, therefore, the State Government cannot forfeit the security and can recover the amount as arrears of land revenue with prescribed interest under Rule 58(2) of the Rules, 1963.

53. However, in our opinion, the judgement of this Court in the cases of ***Ajay Raj Dwivedi (supra)*** and ***Smt. Kalpana Karwariya (supra)*** for the

reasons delineated below are not binding precedent, and therefore, the said two judgements do not come in aid to the petitioner.

54. At this stage, it is pertinent to note that the Apex Court in paragraph nos. 40 to 42 in the case of ***State of U.P. and Another Vs. Synthetics and Chemicals Ltd. & Another 1991 (4) SCC 139*** has held as under:-

“40. ‘Incuria’ literally means ‘carelessness’. In practice per incuriam appears to mean per ignoratium. English courts have developed this principle in relaxation of the rule of stare decisis. The ‘quotable in law’ is avoided and ignored if it is rendered, ‘in ignoratium of a statute or other binding authority’. (Young v. Bristol Aeroplane Co. Ltd. (1944) 2 All ER 293). Same has been accepted, approved and adopted by this Court while interpreting Article 141 of the Constitution which embodies the doctrine of precedents as a matter of law. In Jaisri Sahu v. Rajdewan Dubey AIR 1962 SC 83, this Court while pointing out the procedure to be followed when conflicting decisions are placed before a bench extracted a passage from Halsbury’s Laws of England incorporating one of the exceptions when the decision of an appellate court is not binding.

41. Does this principle extend and apply to a conclusion of law, which was neither raised nor preceded by any consideration. In other words can such conclusions be considered as declaration of law? Here again the English courts and jurists have carved out an exception to the rule of precedents. It has been explained as rule of sub-silentio. “A decision passes sub-silentio, in the technical sense that has come to be attached to that phrase, when the particular point of law involved in the decision is not perceived by the court or present to its mind.” (Salmond on Jurisprudence 12th Edn., p.153). In Lancaster Motor Company (London) Ltd. v. Bremith Ltd. (1941) 2

*All ER 11, the Court did not feel bound by earlier decision as it was rendered 'without any argument, without reference to the crucial words of the rule and without any citation of the authority'. It was approved by this Court in Municipal Corporation of Delhi v. Gurnam Kaur (1989) 1 SCC 101. The bench held that, 'precedents sub-silentio and without argument are of no moment'. The courts thus have taken recourse to this principle for relieving from injustice perpetrated by unjust precedents. A decision which is not express and is not founded on reasons nor it proceeds on consideration of issue cannot be deemed to be a law declared to have a binding effect as is contemplated by Article 141. Uniformity and consistency are core of judicial discipline. But that which escapes in the judgment without any occasion is not ratio decidendi. In *B. Shama Rao v. Union Territory of Pondicherry's* AIR 1967 SC 1480, it was observed, 'it is trite to say that a decision is binding not because of its conclusions but in regard to its ratio and the principles, laid down therein'. Any declaration or conclusion arrived without application of mind or preceded without any reason cannot be deemed to be declaration of law or authority of a general nature binding as a precedent. Restraint in dissenting or overruling is for sake of stability and uniformity but rigidity beyond reasonable limits is inimical to the growth of law.*

42. Effort was made to support the conclusion, indirectly, by urging that the State having raised same objections by way of review petition and the same having been rejected it amounted impliedly as providing reason for conclusion. Law declared is not that can be culled out but that which is stated as law to be accepted and applied. A conclusion without a reference to relevant provision of law is weaker than even casual observation. In the order of Brother Thommen, the extracts from the judgment of the Constitution Bench quoted in extenso demonstrate that the question of validity of levy of

sales and purchase tax was neither in issue nor was it raised nor is there any discussion in the judgment except of course the stray argument advanced by the learned Attorney General to the following effect: (SCC p. 139, para 43)

"But alcohol not fit for human consumption are not luxuries and as such the State legislatures, according to Attorney General, will have no power to levy tax on such alcohol."

*Sales tax or purchase tax under Entry 54 is levied on sale or purchase of goods. It does not contemplate any distinction between luxury and necessity. Luxuries are separately taxable under Entry 62. But that has nothing to do with Entry 54. What prompted this submission is not clear. Neither there was any occasion nor there is any constitutional inhibition or statutory restriction under the legislative entry nor does the taxing statute make any distinction between luxuries and necessities for levying tax. In any case the bench did not examine it nor did it base its conclusions on it. In absence of any discussion or any argument the order was founded on a mistake of fact and, therefore, it could not be held to be law declared. The bench further was not apprised of earlier Constitution Bench decisions in *Hoechst Chemicals v. State of Bihar* and *Ganga Sugar Mill v. State of U.P.* which specifically dealt with the legislative competence of levying sales tax in respect of any industry which had been declared to be of public importance. Therefore, the conclusion of law by the Constitution Bench that no sales or purchase tax could be levied on industrial alcohol with utmost respect fell in both the exceptions, namely rule of sub-silentio and being in per incuriam, to the binding authority of the precedents."*

55. The Apex Court in the case of ***A-One Granites Vs. State of U.P. and Others 2001 (3) SCC 537*** has explained when the judgement is not

binding precedent. Paragraph nos.11 & 12 of the said judgement is reproduced herein-below:-

“11. This question was considered by the Court of Appeal in Lancaster Motor Co. (London) Ltd. vs. Bremith Ltd., (1941) 1 KB 675, and it was laid down that when no consideration was given to the question, the decision cannot be said to be binding and precedents sub-silentio and without arguments are of no moment. Following the said decision, this Court in the case of Municipal Corpn. of Delhi v. Gurnam Kaur (1989) 1 SCC 101 observed thus: (SCC p. 111, para 12)

"12. In Gerard v. Worth of Paris Ltd. (1936) 2 All ER 905 (CA), the only point argued was on the question of priority of the claimant's debt, and, on this argument being heard, the court granted the order. No consideration was given to the question whether a garnishee order could properly be made on an account standing in the name of the liquidator. When, therefore, this very point was argued in a subsequent case before the Court of Appeal in Lancaster Motor Co. (London) Ltd. v. Bremith Ltd. the court held itself not bound by its previous decision. Sir Wilfrid Greene, M.R., said that he could not help thinking that the point now raised had been deliberately passed sub silentio by counsel in order that the point of substance might be decided. He went on to say that the point had to be decided by the earlier court before it could make the order which it did; nevertheless, since it was decided 'without argument, without reference to the crucial words of the rule, and without any citation of authority', it was not binding and would not be followed. Precedents sub silentio and without argument are of no moment. This rule has ever since been followed.”

12. In State of U.P. v. Synthetics and Chemicals Ltd. reiterating the same view, this Court laid down that such a decision cannot be

deemed to be a law declared to have binding effect as is contemplated by Article 141 of the Constitution of India and observed thus: (SCC p.163, para 41)

“A decision which is not express and is not founded on reasons nor it proceeds on consideration of issue cannot be deemed to be a law declared to have a binding effect as is contemplated by Article 141.”

56. We may respectfully observe that while deciding the two cases i.e. ***Ajay Raj Dwivedi (supra) and Smt. Kalpana Karwariya (supra)***, one vital aspect of the matter was not brought to the notice of the Court that if the MMDR Act or the Rules, 1963 or the Government Order dated 14.08.2017 do not prohibit the forfeiture of security in part or full in the event of non-payment of installment amount of the royalty as per the terms and conditions in the lease deed on the due date whether the incorporation of condition of forfeiture of security in part or whole in the lease deed in the event of violation of any terms and conditions of the lease deed is bad in law for the reason that the State has no power under MMDR Act or the Rules, 1963 or the Government Order dated 14.08.2017 to forfeit the security.

57. The further issue which also arise in the instant case is whether once the petitioner knowingly and voluntarily entered into a contract with the respondent-State by executing a registered lease deed incorporating the said condition and agreed to it, can he resile from it or challenge condition of forfeiture of security in the lease deed.

58. The petitioner does not dispute the execution of the lease deed nor it is the case of the petitioner in the writ petition that the petitioner did

not voluntarily accept the general condition no.1 of Part-3 of the lease deed providing for forfeiture of the security.

59. The specific case of the respondent in the counter affidavit is that the petitioner visited the site personally and after having been satisfied that the quantity which the petitioner was to excavate under the lease agreement was available on the site voluntarily entered into a contract and executed the lease deed. In this respect, paragraph nos.5 to 12 of the counter affidavit are being reproduced herein-below:-

“5. That in advertisement dated 16.11.2017, there was specific condition that before participating in e-tender-cum-e-auction proceeding, the bidder himself inspect the mining area about availability of the estimated quantity of mineral and approach road to the mining area. After participating in e-tender-cum-e-auction proceeding, no representation about availability of mineral will be entertained. The relevant condition is being quoted herein below:

" 22 - शर्तें-

(1) ई निविदा सह ई नीलामी में भाग लेने के पूर्व क्षेत्र में आंकलित उपखनिज की मात्रा एवं खनन स्थल के लिए पहुँच मार्ग आदि के सम्बन्ध में मौके का निरीक्षण कर बिडर स्वयं आश्वस्त हो ले। ई निविदा सह ई नीलामी में भाग लेने के पश्चात इस सम्बन्ध में किसी भी प्रकार का दावा स्वीकार नहीं किया जायेगा।"

6. That the petitioner as per the terms and condition of the advertisement, after fully satisfying about the availability of estimated quantity of mineral and approach road, participated in e-tender-cum-e-auction proceeding and submitted the bid of Rs.1122/- per cubic meters.

7. That since the petitioner's bid was highest, therefore, the same was accepted and a Letter of Intent (L.O.I.) Dated 27.01.2018 (Annexure No. 7 to the writ petition) issued to him.

8. *That the petitioner has prepared the draft mining plan through expert as per Rule 34 of U.P. Minor Mineral (Concession) Rules, 1963 (hereinafter referred as "Rules, 1963") and submitted the same for approval before the Director, Geology and Mining U.P..*

9. *That while preparing the draft mining plan, the petitioner and his expert to whom the petitioner has entrusted the work of preparation of draft mining plan, have again inspected the area since in draft mining plan the entire details with regard to availability of mineral in mining area and method of mining and closure of mining have been mentioned by the petitioner himself.*

10. *That the mining plan submitted by the petitioner was approved on 09.12.2018.*

11. *That the petitioner also got prepared the draft proposal for presentation of the same before the State Environment Impact Assessment Committee (SEIAC) to get the Environment Clearance Certificate from State Environment Impact Assessment Authority (SEIAA) as per notification dated 14.09.2006 and 15.01.2016 issued by the Ministry of Environment Forest and Climate Change (MoEFCC) Union of India. The Environment Clearance Certificate issued to the petitioner on 31.03.2018.*

12. *That thus from perusal of aforesaid facts and circumstances it is evident that the petitioner got inspected the area thrice before execution of mining lease. Firstly, before participating in e-tender-cum-e-auction proceeding as per specific condition mentioned in advertisement. Secondly, while preparing the draft mining plan and third time while preparing the draft proposal for Environment Clearance Certificate. The petitioner deliberately not filed the Mining Plan and Environment Clearance Certificate with writ petition."*

60. Clause-22 of the E-tender notice, which has been reproduced in para-5 of the counter affidavit extracted above, puts an obligation on the bidder to inspect the leased area and also satisfy himself about the availability of estimated quantity of mineral and approach road. The petitioner after having been satisfied about the availability of estimated quantity of mines voluntarily entered into the contract and executed the lease deed.

61. The petitioner has replied paras 5& 6 of the counter affidavit in para-4 of the rejoinder affidavit wherein he did not rebut the specific averments made in paras-5 & 6 of the counter affidavit. The petitioner has further replied paras 7 to 11 of the counter affidavit in para-5 of the rejoinder affidavit. He does not dispute the averments contained in paras 7 to 11 of the counter affidavit and states that the averments made in those paras are matter of record. Paragraph no.12 of the counter affidavit has been replied by the petitioner, but the specific averments contained in paragraph no.12 of the counter affidavit has not been denied by the petitioner in paragraph no.6 of the rejoinder affidavit.

62. The petitioner has averred in para-6 of the rejoinder affidavit that while cancelling the mining lease, the security amount of the petitioner could not be forfeited which has no relation with the condition of advertisement or the mining plan.

63. From the aforesaid facts, it is clear that the petitioner was well aware of the condition no.22 of the E-Tender notice-cum-E-Auction proceeding in the advertisement that the petitioner should get himself satisfied about the availability of quantity of mineral on the site and also should get satisfied about the approach road. The petitioner was also well aware of the fact that after participating in the E-Tender-cum-E-Auction proceeding, the petitioner would not be permitted to raise any

grievance with regard to non-availability of mineral or any defect in the approach road. So, this condition of E-Tender is binding upon the petitioner. The detailed facts stated by the respondent in the counter affidavit in paras extracted above stating that the petitioner had inspected the area thrice before execution of the mining lease and having entered into a contract with open eyes knowing fully well that after execution of the contract, he cannot raise any grievance with regard to non-availability of quantity of mineral have not been denied by the petitioner categorically in the rejoinder affidavit.

64. Since, the condition no.22 of the advertisement is binding upon the petitioner, therefore, it is not open to the petitioner to take a plea that after the rainy season when he visited the site for commencing the mining operation after 01.10.2018, he found the mining area was submerged with water to deny his liability to pay third installment.

65. The petitioner has also relied upon the judgement of this Court in the case of ***M/s. Gauri Shankar Singh Vs. State of U.P. & Others*** passed in Writ-C No.12041 of 2020. Paragraph nos.10 to 12 of the said judgement are being reproduced herein below:-

“10. Having heard the learned Senior Counsel Sri Mukesh Prasad assisted by Sri Amit Upadhyay, Advocate and the learned Standing Counsel Sri Anubhav Chandra, we are of the view that the orders impugned cannot be sustained in the eyes of law; the petitioner was granted a lease on 03.04.2018 for a period commencing from 03.04.2018 and ending on 02.03.2023. The petitioner had commenced work on 03.04.2018 and had stopped the work on 30.06.2018 because of the monsoon season. When he commenced work on 01.10.2018, he discovered that there was hardly any sand available in the mining area in question because of the inundation of the river and, therefore, he reported his grievance on 24.10.2018 to

the District Magistrate, who in his turn had ordered an inspection of the area on 03.12.2018. Definitely when a report was asked for on 03.12.2018 by the District Magistrate then he ought to have waited for the report and he should not have hurriedly issued the notice on 16.01.2019 and, thereafter, should not have canceled the lease on 01.02.2019. Also we filed that the report in fact was submitted on 25.02.2019 but the District Magistrate had already, without waiting for it, hurriedly passed the order on 1.2.2019.

11. Still further we find that under Rule 58 of the U.P. Minor Mineral (Concession) Rule, 1963 after the issuing of notice on 16.1.2019, the District Magistrate ought to have waited for a period of 30 days and, thereafter, should have canceled the lease. Having not done so, we find that the District Magistrate, Gorakhpur definitely acted in hot haste. He did not wait for the report as he had asked for by his own order dated 03.12.2018 and also did not wait for the statutory period of 30 days after the issuing of the notice. Also we find that the Appellate Court and the Revisional Court which ought to have considered the report dated 25.2.2019 did not consider the same and dismissed the appeal and the revision wrongly. We do find that as per the judgement and order dated 11.01.2021 passed in writ petition being Writ-C No.17258 of 2020 (Vipul Tyagi vs. State of U.P. And 6 Others) royalty was chargeable only for the period for which minerals were removed by the petitioner.

12. Under such circumstances, the order of the District Magistrate, Gorakhpur dated 01.02.2019, the order of the Appellate Court dated 15.11.2019 and the order of the Revisional Court dated 03.03.2020 are quashed. The consequential recovery certificate dated 20.03.2020 is also quashed and is set aside.”

66. The judgement of this Court in the case of *M/s. Gauri Shankar Singh (supra)* is distinguishable on facts, therefore, this judgement is of no help to the petitioner. In the said case, after the petitioner (Gauri Shankar) reported the matter to the District Magistrate regarding non-availability of sand in mining area, the District Magistrate ordered the inspection of the area on 03.12.2018, and he without waiting for the report cancelled the lease deed before expiry of 30 days statutory period provided in Rule 58 (1) of the Rules, 1963. In the instant case, the petitioner has not challenged the legality of the termination of lease deed. The issue of legality of forfeiture of security was also not before the Court in the case of *M/s. Gauri Shankar Singh (supra)*, whereas in the present case, the petitioner has challenged the legality of forfeiture of security amount, therefore, for this reason also, the judgement of this Court in the case of *M/s. Gauri Shankar Singh (supra)* does not come to the aid of the petitioner.

67. To appreciate the issue whether the petitioner can invoke the writ jurisdiction under Article 226 of the Constitution of India to wriggle out of a condition stipulated in the contract, few judgements of the Apex Court referred below postulating the law in this respect needs to be considered by this Court.

68. The Apex Court in the case of *State of Orissa & Others Vs Narain Prasad & Others, AIR 1997 SC 1493* was called upon to consider a question as to whether the writ jurisdiction under Article 226 of the Constitution of India can be invoked by a party to a contract to wriggle out of a condition stipulated in the contract that the said undertaking in the contract is not enforceable in law. In paragraph no.2 of the judgement the Apex Court framed the question which is being reproduced herein-below:

“2. Having voluntarily entered into contracts with the Government of Orissa, undertaking to lift a particular quantity of liquor every month and also to remit the monthly excise duty in two equal installments on the fifth and fifteenth of the month, the respondents-licencees committed default on both counts and when the amount of excise duty is sought to be recovered from them, they have turned round and are contending that the said undertaking in the contract is not enforceable in law. They invoked the extraordinary jurisdiction of the High Court under Article 226 of the Constitution for the purpose. The High Court has upheld their contention. Hence, these appeals by the State of Orissa.”

69. In the said case, Rule 6-A of the Orissa Excise Exclusive Privilege Rules, 1970 provided that the licensee shall have to undertake to lift M.G.Q. (Minimum Guarantee Quantity) of liquor every month. Obligation of the licensee to lift the M.G.Q. of liquor and to remit the excise duty payable for the month under Clause (3) of the Rules are two distinct obligations. While the obligation to lift the M.G.Q. was to be discharged before the end of the month, the obligation to remit the excise duty for the month is to be discharged in two equal installments; the first installment by the fifth and the second installment by fifteenth of the month. The consequences of not remitting the excise duty in the manner specified are set out in clause (3) & (4) which make the said obligation mandatory and emphatic.

70. The Rule also makes it clear that if in a given month, the full M.G.Q. is not lifted, the Collector can permit the deficit to be lifted in the subsequent month but this has nothing to do with the obligation to remit the excise duty for the month on the date specified. Every person whose bid or tender has been accepted is required to execute an agreement/contract in the prescribed form.

71. Under this agreement, the contractor/licensee agrees to abide by the rules and conditions relating to retail vend of country spirit (liquor) as stipulated in the license as also the general conditions of licence. The said condition shall be treated as part of agreement. Clause (2) of the agreement obliges the contractor to draw a particular quantity of liquor every month from the specified warehouse. Under clause (3), the contractor undertakes to pay duty at the prescribed rate at the warehouse prior to lifting the stock. This condition provides that excise duty shall be remitted prior to lifting; it does not say it shall be remitted at the time of lifting. Under clause (7) of the contract, the contractor/licencee agrees to abide by all the provisions of the Act and the Rules and instructions as may be issued from time to time.

72. The respondent defaulted in payment of equal installment of excise duty and when the said amount of excise duty was sought to be recovered from them, they turned around and contended that the said undertaking in the contract is not enforceable in law on the pretext that the demand for payment of excise duty on unlifted quantity of arrack amounts to levy of duty and such levy is not warranted by the Act. It was contended that Rule 6A (3) is ultra vires the rule making power of the Government.

73. It was contended that if there is a sale of liquor, duty can be collected on the liquor sold, but that seeking to collect duty even in the absence of sale amounts to levy of duty contrary to the provisions of the Act.

74. The State of Orissa disputed the aforesaid contention and contended that the respondent having entered into an agreement for sale of country liquor and having been granted an exclusive privilege on certain terms and condition cannot now after entering into a contract

wriggle out from contract obligation and contend that the amount demanded for short fall of MGQ is valid.

75. The Apex Court allowed the Special Leave to Appeal preferred by the State of Orissa and held in paragraph-35 of the said judgement as under:

“35. Lastly, we may also invoke the holding in Har Shankar (AIR 1975 SC 1121) and Jageram (AIR 1980 SC 2018) that the writ petitioners, having entered into agreements voluntarily, containing the conditions aforesaid and having done the business under the licences obtained by them, cannot be allowed to either wriggle out of the agreements nor can they be allowed to challenge the validity of the Rules which constitute the terms of the contract. The High Court should not have exercised its extraordinary discretionary jurisdiction under Article 226 of the Constitution in aid of such licencees.”

76. In the case of ***Venkataraman Krishnamurty and Another Vs. Lodha Crown Buildmart Private Limited***, 2024 (4) SCC 230, the Apex Court has laid down the principles based on which, the terms and conditions of the contract should be interpreted. Paragraph nos.21 and 22 of the said judgement are being reproduced herein below:-

“21. In this regard, we may refer to the Constitution Bench decision in General Assurance Society Ltd. v. Chandumull Jain, wherein it was observed that, in interpreting documents relating to a contract of insurance, the duty of the court is to interpret the words in which the contract is expressed by the parties because it is not for the court to make a new contract, however reasonable, if the parties have not made it themselves. Thereafter, in Rajasthan State Industrial Development & Investment Corpn. v. Diamond & Gem Development Corporation Ltd., this Court reiterated that a contract, being a creature of an agreement between two or more parties, is to be interpreted giving the actual meaning to the words contained in the contract and it is not permissible for the court to make a new contract, however reasonable, if the parties have not made it themselves.

22. More recently, in Shree Ambica Medical Stores v. Surat People's Coop. Bank Ltd., it was observed that, through its interpretative process, the court cannot rewrite or create a new contract between the parties and has to simply apply the terms and conditions of the agreement as agreed between the parties. Again, in GMR Warora Energy Ltd. v. CERC, it was observed that courts cannot substitute their own view of the presumed understanding of commercial terms by the parties, if the terms are explicitly expressed. It was held that the explicit terms of a contract are always the final word with regard to the intention of the parties.”

77. Para-1 of part-II of the lease deed contains a table in which the date of installment towards royalty to be paid by the petitioner is mentioned. The lease deed has been executed in Form MM-6 as per Rule 29 of Rules, 1963. The incorporation of table with regard to schedule of deposit fixing a particular date for payment of installment for royalty is part of the lease deed, to which the petitioner voluntarily with open eyes agreed to while executing the lease deed. Thus, under the lease deed, the liability to pay installment of royalty upon the petitioner is the date mentioned in the said table which the petitioner voluntarily agreed, and therefore, the schedule of deposit detailed in clause-1 of part-II of the lease deed is the terms and conditions of the agreement by which the petitioner is bound, and any violation of non-payment of installment for royalty on the date fixed will amount to breach of the terms and conditions of the lease deed, therefore, the petitioner cannot say that the schedule for deposit mentioned in the lease deed is not the part of the terms and conditions of the lease deed, hence, non-payment of any installment on a fixed date cannot be treated as violation of any condition of the lease deed.

78. The lease deed stipulates for forfeiture of security amount in part or full which is the term and condition of the lease deed, and till the

petitioner demonstrates that such a condition is unconscionable or pricks the conscious of the Court or against the public policy, the petitioner having agreed to the said condition knowingly and voluntarily cannot wriggle out of the said condition contending that non-payment of installment on a particular date stipulated in the lease deed does not amount to violation of the lease deed nor he can contend that the respondent-State has no jurisdiction to forfeit the security inasmuch as Rule 58 of the Rules, 1963 or Clause-19 (3) of the Government Order dated 14.08.2017 do not confer power upon the State Government to forfeit the security.

79. The law is settled that Courts cannot substitute their own view of the presumed understanding of commercial terms by the parties, if the terms are explicitly expressed. The explicit words of the contract are always the final word with regard to the intention of the parties. Therefore, denying or restraining the respondent-State from forfeiting the security which is permitted under the lease deed in case of violation of any condition of lease or violation of any Rules of 1963 would amount to rewriting a contract which power Court does not possess while interpreting a contract.

80. The contention of the learned counsel for the petitioner that if the installment of royalty is not paid on the due date, the same can be recovered as arrears of land revenue is misconceived for the reason that recovery of royalty as arrears of land revenue is the consequence of non-payment of installment on the due date which is evident from clause (3) of Part-II of the lease deed while forfeiture of security is the consequence of violation of any condition of the lease deed as per clause (1) of Part-III of the lease deed which has been accepted by the petitioner voluntarily. Therefore, in the event of any breach of the

condition of the lease deed, the respondents are well within their rights to forfeit the security.

81. So far as Rule 59 of Rules, 1963 is concerned, the same deals with consequences of contravention of certain conditions on existence of which the penalty provided in the said provision for violating the condition of the lease deed under Rule 59 can be imposed and can also be recovered from the security of lessee. Neither Rule 58 of Rules, 1963 nor Clause 19(3) of the Government Order dated 14.08.2017 nor Rule 59 of the Rules, 1963 or any provision either in the MMDR Act or Rules, 1963 prohibits the incorporation of a condition in the lease deed that in the event of violation of any terms and conditions of the lease deed, the security in part or full can be forfeited.

82. The stipulation of condition of forfeiture of security in the lease deed find its genesis in Form MM-6 “Model Form of Auction Lease for Mining” in which lease deed is to be executed as per Rule 29 (1) of the Rules, 1963. Rule 29 of Rules, 1963 and Form MM-6 “Model Form of Auction Lease for Mining” are reproduced herein-below:-

“29. Execution of lease deed- (1) *The successful bidder/tenderer after receiving Letter of Intent of concerned e-tender/ e-auction/ e-tender cum e-auction shall produce; approved Mining Plan and Clean Environment Certificate prescribed as per rule, and a lease deed concerning the same will be executed in form MM-6 or in bid similar format. The registration of the said executed lease deed will be registered within three months period. The period of lease will be counted from the date of execution of the concerned lease deed. If due to fault on the part of lease holder, registration of the said executed lease deed is not registered within three months, then the said lease deed will be treated as null and void and the amount of security will be seized by the District Magistrate.*

(2) [Omitted].

(3) *A copy of the lease deed together with the map of the area shall be sent by the District Officer or the Committee, as the case may be, to the Director, Geology and Mining, Uttar Pradesh, within fifteen days from the date of execution thereof."*

FORM MM-6

Model Form of Auction Lease for Mining
[See Rule 29]

This indenture made this....day of.....20..... between the Governor of the Uttar Pradesh (hereinafter referred to as "the State Government" which expression shall where the context so admits be deemed to include the successors and assigns) of the one part.

When the lessee is an individual

.....

When the lessees are more than one individual

.....

When the lessee is a register firm

.....

When the lessee is registered company

.....

And the lessee/lessees hereby covenants/covenant with the State Government and the State Government hereby covenants with lessee/lessees as is expressed in the said Rules.

And it is hereby mutually agreed between the parties hereto as in Part III of the said Schedule is expressed.

(THE SCHEDULE ABOVE REFERRED TO)

PART I

The Area of this Lease
Location and area of the lease

.....

PART II**Royalties reserved by this lease**
Amount and mode of payment of royalty

(1) *The lessee/lessees shall during the subsistence of this lease pay to the State Government royalty mentioned below in respect of all.... removed by him/them from the area lease:*

<i>No. of instalment</i>	<i>Amount</i>	<i>Date on which instalment to be paid</i>
<i>1</i>	<i>2</i>	<i>3</i>

Royalty to be free from deduction, etc.

(2) *The instalments of the royalty mentioned in this part shall be paid free from any deductions to the State Government at.....by deposit in Government Treasury, a copy of the challan being supplied to the District Officer.*

Cause of action if royalties are not paid in time

(3) *Should any instalment of royalty due to the State Government under the terms and conditions of these presents be not paid by the lessee/lessees within the prescribed time the same may be recovered on a certificate of such officer as may be specified by the State Government by a general or special order, in the same manner as arrears of land revenue.*

PART III**General Provisions****Lease may be determined on breach of rules, covenants and conditions**

(1) If the lessee/lessees commits a breach of any of the Minor Minerals (Concession) Rules, 1963, or any of the covenants and conditions of this lease, the State Government may determine the lease and forfeit the whole or part of the security deposit, provided that the lessee/lessees shall be given due opportunity to explain the breach before the lease is determined.

Lessee to remove his properties on the expiry of lease

.....
Forfeiture of property left more than three months, after determination of lease

.....
Notices

.....
Stamp duty

.....”

83. Since the lease deed executed between the petitioner and the respondents is to be executed in Form MM-6 as per Rule 29(1) of Rules, 1963, which contains a clause of forfeiture of security in clause (1) of Part-III of the ‘Model Form of Auction Lease for Mining’, therefore, the nature of lease deed is a statutory lease deed, and the condition incorporated with regard to the forfeiture of security in the lease deed also has its root in Rule 29 (1) of the Rules, 1963, therefore, the argument of learned counsel for the petitioner that the respondent State has no authority or jurisdiction to forfeit the security as neither Rule 58 nor Clause-19(3) of the Government Order dated 14.08.2017 confers any power upon the respondent State to forfeit the security is misconceived.

84. So far as the argument of learned counsel for the petitioner that since the petitioner has not excavated the mineral after 01.10.2018, therefore, it is not a violation of lease deed and is protected by Section 15 (3) of the MMDR Act, which according to the petitioner provides that the petitioner is liable to pay royalty only for that much quantity of mineral which has been excavated by him. It would be useful to have a glance at Section 15(3) of MMDR Act, 1957 which is reproduced below:-

“15. Power of State Government to make rules in respect of minor minerals.—

(3). The holder of a mining lease or any other mineral concessions granted under any rule made under sub-section (1) shall pay [royalty or dead rent, whichever is more] in respect of minor mineral removed or consumed by him or by his agent, manager, employee, contractor or sub-lessee at the rate prescribed for the time being in the rules framed by the State Government in respect of minor minerals:

Provided that the State Government shall not enhance the rate of [royalty or dead rent] in respect of any minor mineral for more than once during any period of [three years].”

85. Normal principle of statutory interpretation is that when the words used in the statute are clear and unambiguous, the same should be given their normal meaning without adding or rejecting any word. However, there is an exception to this general rule. In case, the Court finds that the provision is vague and ambiguous or the normal meaning may lead to confusion, absurdity or the repugnancy with other provisions, the Court may by using the interpretative tools, set right the situation by adding or omitting or substituting words in the statute.

86. The Apex Court in the case of ***Independent Sugar Corporation Ltd. Vs. Girish Sriram Juneja & Others (2025) 5 SCC 209*** has held in paragraph nos.199 to 201 as under:-

“199. T. L. Venkatarama Aiyar, J. in Tirath Singh vs. Bachittar Singh (1955) 2 SCC 23 stated that: (SCC OnLine SC, para 5)

“.....’Where the language of a statute, in its ordinary meaning and grammatical construction, leads to a manifest contradiction of the apparent purpose of the enactment, or to some inconvenience or absurdity, hardship or injustice, presumably not intended, a construction may be put upon it which modifies the meaning of the words, and even the structure of the sentence.’ ”

The literal and purposive rules of interpretation, as well as their scope, obligation, and limitations, are prefaced for further discussion. The

right consideration of issues on hand is achieved by not referring to the precedents on literal or purposive interpretation. It is axiomatic that the precedents on interpretation are specific to the statute, language and case. The Court, in a given case before it, goes by the first principles of the respective tools of interpretation.

200. The literal interpretation is not an inviolable rule. The decisions referred to supra, while underlying the principle involved in literal interpretation, had laid down that the literal interpretation, if it leads to hardship, inconsistency, defeats the working of the statute, and acts counterproductive to the purpose and object sought to be achieved by the statute. A statute must be construed in such a manner as to make it workable.

201. Literal interpretation is not the only tool to begin with while constructing a statute. The often-cited judgements on literal interpretation set out when purposive interpretation is considered and preferred over literal interpretation. In the instant appeal, both interpretations have been commended for consideration.”

87. In the case of ***Palm Groves Cooperative Housing Society Ltd. Vs. Magar Girme & Gaikwad Associates etc.*** 2025 SCC OnLine SC 1790, the Apex Court in paragraph no.19.2 noted paragraph no.21 of the judgement of ***Afcons Infrastructure Ltd. Vs. Cherian Varkey Construction Company Private Ltd.*** to explain as to how tools of interpretation of the statute be applied for purposive construction of statute. Paragraph no 19.2 of the judgement is reproduced below:-

“19.2 The law on the issue was further summed up by this Court in Afcons Infrastructure Limited v. Cherian Varkey Construction Company Private Limited. It was a case pertaining to interpretation of Section 89 of the CPC. Relevant para 21 thereof is extracted below:

“21. There is however an exception to this general rule. Where the words used in the statutory provision are vague and ambiguous or where the plain and normal meaning of its words or grammatical construction thereof would lead to confusion, absurdity, repugnancy with other provisions, the courts may, instead of adopting the plain and grammatical construction, use the interpretative tools to set right

the situation, by adding or omitting or substituting the words in the statute. When faced with an apparently defective provision in a statute, courts prefer to assume that the draftsman had committed a mistake rather than concluding that the legislature has deliberately introduced an absurd or irrational statutory provision. Departure from the literal rule of plain and straight reading can however be only in exceptional cases, where the anomalies make the literal compliance with a provision impossible, or absurd or so impractical as to defeat the very object of the provision. We may also mention purposive interpretation to avoid absurdity and irrationality is more readily and easily employed in relation to procedural provisions than with reference to substantive provisions.

21.1. Maxwell on Interpretation of Statutes (12th Ed., p. 228), under the caption "modification of the language to meet the Intention" in the chapter dealing with "Exceptional Construction" states the position succinctly:

"Where the language of a statute, in Its ordinary meaning and grammatical construction, leads to a manifest contradiction of the apparent purpose of the enactment, or to some inconvenience or absurdity, hardship or injustice, which can hardly have been intended, a construction may be put upon it which modifies the meaning of the words, and even the structure of the sentence. This may be done by departing from the rules of grammar, by giving an unusual meaning to particular words, or by rejecting them altogether, on the ground that the legislature could not possibly have intended what its words signify, and that the modifications made are mere corrections of careless language and really give the true meaning. Where the main object and intention of a statute are clear, it must not be reduced to a nullity by the draftsman's unskilfulness or ignorance of the law, except in a case of necessity, or the absolute intractability of the language used."

This Court in Tirath Singh v. Bachittar Singh, [(1955) 2 SCC 23: AIR 1955 SC 830] approved and adopted the said approach.

21.2. In Shamrao V. Parulekar v. District Magistrate, Thana, [(1952) 2 SCC 1: AIR 1952 SC 324: 1952 Cri LJ 1503] this Court reiterated the principle from Maxwell: (AIR p. 327, para 12)

"12... if one construction will lead to an absurdity while another will give effect to what common sense would show was obviously

intended, the construction which would defeat the ends of the Act must be rejected even if the same words used in the same section, and even the same sentence, have to be construed differently. Indeed, the law goes so far as to require the courts sometimes even to modify the grammatical and ordinary sense of the words if by doing so absurdity and inconsistency can be avoided."

21.3.

21.4.

21.5.

21.6. Justice G.P. Singh extracts four conditions that should be present to justify departure from the plain words of the statute, in his treatise *Principles of Statutory Interpretation* (12th Edn., 2010, Lexis Nexis, p. 144) from the decision of the House of Lords in *Stock v. Frank Jones (Tipton) Ltd.*, [[1978] 1 WLR 231: [1978] 1 All ER 948 (HL)]: (WLR p. 237 FG)

"... a court would only be justified in departing from the plain words of the statute when it is satisfied that: (1) there is clear and gross balance of anomaly; (2) Parliament, the legislative promoters and the draftsman could not have envisaged such anomaly, could not have been prepared to accept it in the interest of a supervening legislative objective; (3) the anomaly can be obviated without detriment to such legislative objective; (4) the language of the statute is susceptible of the modification required to obviate the anomaly."

88. The literal interpretation of statute is not sacramental rule. The decision referred supra emphasised the principle of literal interpretation but if such interpretation leads to hardship, inconsistency, defeats the working of the statute, and acts counterproductive to the purpose and object sought to be achieved by statute, it must be given purposive construction by focusing on the intention of the legislature in framing the law. This flexible approach allows Courts to consider legislative intent to prevent absurd outcome and give effect to public good.

89. As per **Black's Law Dictionary (5th Edition)**, the meaning of word 'only' is *solely, merely, exclusive or necessary in a particular situation, in contrast to all the other things that are not true, appropriate or necessary.*

90. As per **The New International Webster's Comprehensive Dictionary**, the meaning of word 'only' is *solely; merely; exclusively: limiting a statement to a single defined person, thing or number.*

91. In view of the meaning given in various dictionaries to the word 'only', we are of the view that the argument of learned Chief Standing Counsel-II has substance that if the legislature had intended that lessee is liable to pay royalty or lease rent or dead rent whichever is higher only for the quantity removed or consumed by the lessee, the legislature would have incorporated the word 'only' before the words 'in respect of minor mineral removed or consumed'.

92. If the interpretation of Section 15(3) put forth by the learned counsel for the petitioner that the petitioner is liable to pay royalty for the quantity of mineral consumed by the petitioner is accepted, that would lead to absurdity since it could never be the intention of the legislature, further such interpretation would render the other provision of Rules, 1963 and the terms and condition of the lease deed which is in Form MM6 as per Rule 29 of Rules, 1963 redundant.

93. The Division Bench of this Court in paragraph no.38 of the judgement in the case **Raj Pratap Yadav Vs. State of U.P. and Others** passed in **Writ-C No.28087 of 2023** has held that Section 15(3) of the MMDR Act cannot be interpreted in a manner so as to confer benefit upon the lessees for not paying installments where mineral has not been

removed or consumed by him. Paragraph no.38 of the said judgement is reproduced herein below:

“38. In the backdrop of the aforesaid discussion, in a case of auction lease that is covered by Chapter IV of the Rules, 2021, to say that while considering an application of surrender of mining lease, ‘royalty’ would be payable only to the extent of the mineral removed or consumed, would not be appropriate. Doubtless, where there occurs violation of the terms and conditions of the mining lease which is not promptly attended to by the lessee, the authorities are required to take steps without delay for termination of the lease in the interest of all concerned. But where the mining lease deed executed in Form MM-6 or in similar format under the Rules made under the provisions of Section 15 (1) and (1-A) of the Act, 1957 provides for the quantity of minor mineral to be excavated annually in cubic meters, and the highest bid offered by the lessee, and the total amount of instalments payable in the first year and subsequent years, which also form the consideration for the contract, then the instalments would be payable under the terms of the lease. Therefore, the provisions of Section 15 (3) of the Act, 1957 cannot be read or interpreted in a manner to confer a benefit on the lessee for not paying the installments where no mineral has been removed or consumed by him. Thus, to this extent, the judgment of this court in Vipul Tyagi when read in the light of the judgment of the Supreme Court in D.K. Trivedi, the provisions of the Act 1957, and of the Rules of the State Government framed under the powers delegated by the Act 1957, would not operate as a binding precedent.

94. The other submission of learned counsel for the petitioner in respect to the fact that the respondent can forfeit the security only if the conditions enumerated in Rule 29 of the Rules, 1963 are present, the said submission also lacks merit for the reason that it contemplates the

forfeiture of security if the lease deed is not executed within one month by the lessee because of default on the part of the lessee from the issuance of lease deed or LOI, or as the case may be. However, Rule 29 of the Rules, 1963 does not prohibit the respondent-State to forfeit the security nor prohibits the inclusion of forfeiture clause in the lease deed in case of violation of terms and conditions of lease deed. Lease deed is prepared in Form MM-6 named as 'Model Form of Auction Lease for Mining' under Rule 29 of Rules, 1963 which contains forfeiture clause in para-1 of Part-III which has been extracted above.

95. So far as the contention of learned counsel for the petitioner with regard to violation of principle of natural justice by the respondent State in forfeiting the security is concerned, we may note that the rule as well as lease deed prescribes for providing opportunity of hearing before cancellation of lease deed and not before forfeiting the security. However, we are of the view that even before forfeiting the security, a notice and opportunity of hearing ought to be given to the lessee for the reason that the forfeiture of security prejudices the rights of lessee and entails civil consequences.

96. In the instant case, though the authority should have given a notice and opportunity of hearing to the petitioner before forfeiting the security to rebut the allegation against the lessee regarding violation of any condition of the lease deed for invoking forfeiture clause. However, we do not propose to remand the matter for violation of principles of natural justice for the reasons delineated herein-below.

97. The petitioner has raised all the contentions challenging the action of the respondent-State in forfeiting the security of the petitioner, and this Court has given ample opportunity of hearing to the petitioner to advance all contentions which he could have advanced before the

authority challenging the legality of action of respondent in forfeiting the security. This Court has deliberated and dealt with all the contentions advanced by the petitioner challenging the action of the respondent-State in forfeiting the security of the petitioner, therefore, no useful purpose would be served in remanding the matter to the authority on the ground of violation of principles of natural justice as such an exercise would be an empty formality and a wasteful exercise. Therefore, in such view of the fact, we are not inclined to remit the matter to the authority on the ground of violation of principles of natural justice.

98. So far as the contention of learned counsel for the petitioner that since the lease deed stipulates the forfeiture of security in part or full and as the discretion has been vested upon the authority to forfeit the security in part or full, therefore, such discretion should be supported by reason is concerned, we may add that clause (1) of Part-III of the lease deed is a part of contract and the petitioner is bound by such condition of lease deed. If for any reason, petitioner is of the view that the authority should have forfeited the security of lessor amount than the entire security, the petitioner has a remedy to claim damage on the aforesaid ground under Civil Law, and this Court cannot interfere nor substitute the terms and conditions of the contract by assessing the amount of security which the respondent-State could forfeit under the agreement.

99. It has also been urged by the learned counsel for the petitioner that the action of the respondent in not adjusting the security amount in the third installment is arbitrary and is violative of Article 14 of the Constitution of India inasmuch as in other districts, the District Magistrate has cancelled the lease deeds while passing orders under Rule 58 of Rules, 1963 and has adjusted the security amount deposited by the lessee in the dues of the lease amount/royalty, therefore, forfeiture of

security cannot be sustained. In this respect, necessary averments has been made by the petitioner in paragraph no.32 of the writ petition which is reproduced herein-below:-

“32. That here it is also pertinent to mention here that in different District in the Uttar Pradesh on the ground of the non deposition of the quarterly installment of the annual lease amount by the lessee of the mining lease District Magistrate has cancelled the lease deeds while passing the orders under Rule 58 and while cancelling the lease deed under rule 58 District Magistrates have adjusted the security amount deposited by the lessee in the dues of the lease amount/royalty but in the case of the petitioner on the same ground while passing the order dated 29-12-2018 by cancelling the mining lease of the petitioner the District Magistrate has illegally forfeited the security amount deposited by the petitioner and not adjusted the same against the dues of the petitioner which is clear violation of the Article 14 & 16 of the Constitution of India. That for this regard in similar nature the order dated 04-06-2018 passed by the District Magistrate, Allahabad and three orders dated 29-12-2018 passed by the District Magistrate, Mahoba by which while passing the order under rule 58 for cancelling the mining lease of the lessee on the ground of non deposition of the installments of the quarterly lease amount by the lessee the security deposited by the lessee have been adjusted against the dues of the lessee, are being attached herewith as Annexure No.-13 and 14 to this petition.”

100. The respondent-State has replied the paragraph no.32 of the writ petition in paragraph no.43 of the counter affidavit, which is also reproduced herein-below:-

“43. That in reply to the contents of paragraph no.32 of the writ petition, it is submitted that the part-3 of mining lease (Page. 77 -78 of writ petition) relates to general condition and additional condition. General condition no.(1) specifically provide that on violation of any rule of U.P. Minor Mineral (Concession) Rules, 1963 or covenant and condition of mining lease, the mining lease

may be determined and the security deposit may be forfeited wholly or partly.

That there is specific condition for forfeiture of security deposit and no provision for adjustment of the entire amount of security, if the decision for determination of lease has been taken as per part-3 clause-1 of mining lease.

That the decision taken by District Magistrate of the Districts in which the entire security deposit has been adjusted was their own discretion and the benefit of the same cannot be extended to the petitioner as per the terms and condition of mining lease.”

101. The security amount may have been adjusted by the District Magistrates of some of the Districts as stated by the petitioner in paragraph no.32 of the writ petition, but that would not give a right to the petitioner to get the security amount adjusted in the third installment inasmuch as neither Rules, 1963 nor clause (1) of Part-III of the mining lease permits the security amount to be adjusted against any installment or any amount due from the petitioner.

102. The law is settled that benefit of Article 14 of the Constitution of India cannot be extended to perpetuate an illegality. In this respect, it would be apt to reproduce paragraph nos.9 to 11 of the judgement of the Apex Court in the case of ***Tinku Vs. State of Haryana and Others, 2024 SCC OnLine SC 3292:-***

“9. That apart, the claim as has been stated above, cannot be accepted being not supported with any statutory backing. This is required for making any claim including a claim for compassionate appointment, which is an exception to the general rule of appointment requiring a proper advertisement and selection process to be followed as per rules which is an accepted norm. If some wrong benefit has been conferred or some benefit which is contrary to the scheme has been granted, it would not bestow a right upon the others to claim it as a right of equality by reference to Article 14 of the Constitution of India.

10. There are catena of judgments of this Court that clearly lay down the principles which govern such claims. Some of which are Shanti Sports Club v. Union of India, Chandigarh Administration v. Jagjit Singh, R Muthukumar v. TANGEDCO, Basawaraj v. Special Land Acquisition Officer.

11. The very idea of equality enshrined in Article 14 is a concept clothed in positivity based on law. It can be invoked to enforce a claim having sanctity of law. No direction can, therefore, be issued mandating the State to perpetuate any illegality or irregularity committed in favour of a person, an individual, or even a group of individuals which is contrary to the policy or instructions applicable. Similarly, passing of an illegal order wrongfully conferring some right or claim on someone does not entitle a similar claim to be put forth before a court nor would court be bound to accept such plea. The court will not compel the authority to repeat that Illegality over again. If such claims are entertained and directions issued, that would not only be against the tenets of the Justice but would negate its ethos resulting in the law being a causality culminating in anarchy and lawlessness. The Court cannot ignore the law, nor can it overlook the same to confer a right or a claim that does not have legal sanction. Equity cannot be extended, and that too negative to confer a benefit or advantage without legal basis or justification.”

103. So far as Rule 50 of 1963 with regard to refund of security is concerned, it states that after determination of a mining lease, the amount of security deposit lying in deposit with the State Government not required to be applied for any of the purposes mentioned in the Rules shall be refunded to the lessee ordinarily within a period of six months from the date of determination of lease. The said rule talks of refund of security only if the security deposit lying in deposit with the State Government after the lease deed is determined is not to be used for any of the purposes mentioned in the Rules shall be refunded to the lessee within a period prescribed in the said Rule.

104. In the present case, the security amount has been forfeited by the respondent authority on the violation of terms and conditions of the lease deed as held above, therefore, Rule 50 of the Rules, 1963 is not attracted in the instant case nor Rule 50 would become redundant since it will have its application in all those cases where the lease deed has been determined and no amount is due from the lessee under the Rules to the respondent State, in such an event, respondent-State is under obligation to refund the security lying in deposit with the respondent-State.

105. Before parting with the judgement, we may add that petitioner has not raised any contention challenging the recovery of third installment. The petitioner has emphasised for adjustment of security money towards third installment which is also evident from prayer (ii) of the writ petition extracted in paragraph no.2 of the judgement.

106. For the reasons given above, we are of the view that the writ petition lacks merit and deserves to be dismissed. Accordingly, the writ petition is *dismissed* with no order as to costs.

January 21, 2026

Sattyarth/NS

(Amitabh Kumar Rai,J.) (Saral Srivastava,J.)