FINAL ORDER NO.3/2014
DATE: 15.01.2014

(In Revision Application file No.22/(46)/2012-RC-I)

M/s Arjun Ladha Revisionist

Vs.

State Government of Odisha Respondent

O R D E R

(Under Section 30 of the Mines and Minerals (Development and Regulation) Act, 1957 and Rule 55 of the Mineral Concession Rules, 1960 (MCRs)

The Revisionist has filed this revision petition on 29.06.2012 challenging the order No. 3716dated 15.5.2012 passed by the Deputy Director Mines Joda – Circle (hereinafter referred to as "DDM") whereby it has been held that the Revisionist has extracted mineral mineral ore) excavated from the illegal pits should be treated as unlawful. The case was heard on 31.07.2013. The Revisionist was represented by Shri Naveen Kumar, Advocate and the State Government was represented by Ms. Kirti Mishra, Advocate. In his revision petition, the Revisionist has made following, amongst other submissions:

2. The Revisionist has submitted that the DDM has passed the impugned order on the basis of ex-parte report dated 3.5.2012 submitted by "District Level Squad" without giving any opportunity of hearing and without any show cause notice or without giving any reason or basics. The Revisionist has further submitted that the impugned order is in clear violation of the decision and findings rendered by this Tribunal in Revision Application No. 22(06)/2011-RC-1 dated 29.11.2011.

3. The Revisionist has stated that the Respondent Authorities have in fact not done any measurement or determination of any kind except holding arbitrarily that the lessee has expanded quarries. It is submitted that no basis or reason has been disclosed either in the report of the district level squad or in the order of DDM to show that in what manner and on

what basis they come to the conclusion that lessee has expanded the quarrries. The Revisionist has further submitted that the allegation made in the impugned order or in the report of the District level squad are contrary to the joint verification report dated 5.6.2004 as well as the report dated 31.10.2009 wherein it has been clearly held that the members of the Committee went round the area and it was noticed that the entire area was demarcated and pillars have been fixed. During joint verification of the broken up area, 19 numbers of quarries were located and measured but no working was noticed beyond the lease boundary. The working quarry, stack yard and waste dump were also found in the non-forest land.

4. That the District Level Squad has not made any inquiry or measurement except that it has mechanically reiterated the allegations made in the joint verification report dated 31.10.2009. It is submitted that the said allegations have already been set aside by Revisioal Authority vide its order dated 28.11.2011. It is pertinent to mention that in the Joint Verification Report dated 31.10.2009 it was alleged that the broken up area now assessed is 67.35 ha as against the broken up area surveyed earlier as 51.772 ha. It is further pertinent to submit that the said allegation was based on wrong calculation method adopted by the Joint Verification Team and the same was set aside by this Revisional Authority vide its final order dated 29.11.2011. As such the allegation reiterated in the impugned order dated 15.5.2012 or in report dated 3.5.2012 are contrary to the findings of this Revisional Authority and hence it is liable to be set aside.

5. That the DDM and the District Squad both have failed to appreciate that the Joint Verification Team vide its report dated 31.10.2009 specifically recorded that “there was no change of pillars and no working was noticed beyond the lease boundary and the lessee has been working in the non-forest land only”. However due to wrong method of measurement/calculation a (i.e. multiplication of length and breadth of pits) size of pits adopted by the Joint Verification Team a vague, self-contradictory and factually incorrect allegation of expansion of broken up area was made in the said report.

6. That the District Level Squad has committed yet another grave mistake of the fact as it has proceeded on the erroneous assumption that there is 4.38 hectares tenanted tribal land

whereas it is a matter of record that the tenanted tribal land is only 1.78 hectares. Thus the report submitted by District Level Squad is contrary to the undisputed facts and it is based on mere imagination or conjecture as no measurement etc. has been made by the Squad.

7. That the order dated 16.2.2010 passed by the High Court of Odisha was on the basis of the allegation against the Revisionist regarding expansion of the area as per the report submitted by the State Government dated 31.10.2009 before the Hon'ble Court. At the relevant point of time the Revisionist was not issued any show cause with regard to expansion of the broken up area as alleged. But subsequent to the aforesaid report dated 31.10.2009 i.e. after disposal of the writ application the State Government issued a show cause notice on 19.2.2010. The said order of determination was challenged by the lessee in Revision Application No.22(6)/2011 and this Tribunal has been pleased to hold that the boundary demarcation was properly done and the Joint verification report dated 5.6.2004 on the basis of which the lessee was allowed to restart mining operation after lapse of 4 years and accordingly held that the joint verification report of 2004 has been and should be the basis of working by all and in view of the said discussion above, this Tribunal held that the joint verification report of 2009 appears to be cloudy, biased and prejudiced and it has weak evidentiary value. This Tribunal further held that since there is no report of breaking of pillars or expansion of broken up area by any Government official and the exact area as per the boundary description of 2004 as well as 2009 are the same on being super imposed. This Revisional Authority also held that the assessment made in joint verification report of 2009 was faulty and more so it was made behind the back of the lessee, without affording any reasonable opportunity to him.

8. That the High Court of Odisha vide order dated 16.2.2010 directed the State Government to determine the quantity of ore illegally extracted by the petitioner from its lease hold area and to take decision for allowing the petitioner to remove the said ore. The Court had further directed that the determination should be made by any method - even by guesswork.

9. It is further submitted that the aforesaid order dated 16.2.2010 was assailed in SLP by the State Government before the Hon'ble Supreme Court. The Hon'ble Apex court vide its order

dated 21.3.2012 after hearing the arguments and considering the fact that order dated 28.11.2-011 was passed by this Authority disposed of the Special Leave Petition by directing the State Govt. to comply the direction passed by the High Court vide order dated 16.2.2010 However the Hon'ble Apex Court directed the State Govt. to determine the issue by an appropriate method and not by guesswork. The Apex court further clarified that other observations made by the High Court in order 16.2.2010 shall not prejudice the process of determination. It is further submitted that the said order was passed by the Apex court on the basis of the undertaking given by the Counsel of the State Govt.

10. That the State Govt. has failed to comply the order dated 31.3.2012 passed by the Hon'ble Supreme Court in as much as no determination has been made by any appropriate method rather the district level squad and the DDM have arbitrarily and mechanically reiterated the allegations noted in the report dated 31.10.2009. Thus the alleged determination made by the Respondents are prejudiced on the basis of observations made by the High Court.

11. That the District Level Squad has been constituted by the Collector by way of an office order. It is further submitted that the Collector is not at all authorized by law to exercise such power under the MMDR Act. It is submitted that the provisions of the MMDR Act and the rules made there under has been violated in general and that contained in Section 26(2) of the MMDR Act in particular.

12. It is further submitted that in all other cases, the delegation of power has been made by the State Government by way of Gazette Notification as contemplated under Section 26(2) of the MMDR Act, 1957 whereas in the present case it has been sought to be done by way of an office order. The process adopted by the State Government is discriminatory, arbitrary, suffers from bias, and hence in violation of Article 14 of the Constitution of India.

13. The Revisionist has also submitted that it is well settled principle of law that if a statute prescribes a particular procedure or manner of doing an act that thing must be done strictly as per the procedure only or not at all. In other words non-compliance of a statutory procedure renders the impugned order null and void. Relying on a decision from the Apex Court, the

Revisionist has submitted that non-compliance of mandatory provisions laid down under Sub-Section (2) of Section 26 has rendered the impugned order liable to be declared illegal and void (AIR 2004 SC 2615 at Para 29 & 2010(13) SCC 1 para 43.)

14. The Revisionist have also placed reliance on the Supreme Court decision in Dharam Chand Jain Vs. UOI (AIR 1976 SC 1433) wherein the Hon'ble Apex Court has taken a serious note of the attempt of the State Governments disobeying the orders passed by the Revision Tribunal and it has been authoritatively held that the State Government, being a Subordinate Authority in the matter of grant of Mining Lease was obligated under the law to carry out the order of the Central Government. They have further submitted that the law on this point is squarely settled and once the matter is decided by the Central Government, it is not open to the State Government to question the same.

15. The State Govt. in their reply, has at the outset, submitted that the Revision application is based on the premise that the order dated 29.11.11 in RA No.22(06)2011-Rc-I filed by M/s Arjun Ladha has reached finality. However, same is not the case as the State has challenged the order dated 29.11.2011 before the Hon'ble Orissa High Court vide W.P (C) No.9702/12. The revisionist has appeared in the matter and filed its counter affidavit. Therefore the present application is premature. It has also been submitted by the State Govt. that pursuant to the orders of the Hon'ble Supreme Court of India dated 21.3.2012 passed in SLP (C)33926/2010, the District Level Squad was assigned to determine the quantities of minerals lawfully extracted by the lessee involving Forests, Revenue, Mining Transport Department and Commercial Tax Department w.e.f. 1.5.2012. The squad submitted its report on 3.5.2012 wherein it was reported that the lessee had extracted minerals from outside the granted surface right area which is illegal and hence it was concluded that all such materials (iron and manganese pre) excavated from the illegal pits and stacked may be treated as unlawful. Basing on the said report dated 3.5.2012, the Deputy Director of Mines, Joda Circle-cum-Competent Authority had issued the impugned order No.3715 dated 15.5.2012 declaring all the raised ore laying at the mines site as having been raised in violation of section 4(1) of MMDR Act, 1957.

16. The State Govt. has further submitted that the rules of natural justice are not a straitjacket formula. The authorities were directed by the Hon'ble Supreme Court vide order dated 21.3.2012 in SLP(C) No.33926/2010 to determine the legally and illegally raised ore. The assessment of legally and illegally raised ore is based on physical survey of the area and examination of the dimensions of the pits dug and their respective locations. Prior notice to the revisionist could have caused the revisionist to interfere in the process of investigation. Hence, it was deemed fit to undertake such exercise without providing prior information to the petitioner. In the circumstances of this case, there has been no violation of the principles of natural justice causing prejudice to the Revisionist.

17. That the determination of legally and illegally raised minerals was undertaken pursuant to the orders of the Hon'ble Supreme Court of India dated 21.3.2012 passed in SLP (C) No.33926/10. The order of the Hon'ble Supreme Court was subsequent to the order of RA dated 29.11.2011, hence the DDM was justified in examining the status of the working afresh and passing orders as per findings observed in the fiethe

18. The State Govt. in their reply has also stated that the averment regarding lack of authority of the Deputy Director of Mines/District Squad is misconceived. The District Level Squad carried out physical survey and investigation of the lease area before concluding that mining had been carried out outside the granted surface right area. Although, it is a fact that the order of determination of lease was set aside by the RA vide order dated 28.11.2011 but the same is not final and no rights have accrued pursuant to such order. It is again reiterated that the State Government has challenged the order dated 28.11.2011 before the Hon'ble High Court in WP (C) No.9702/2012 which is pending for final disposal.

19. In the rejoinder submitted on 27.5.2013, the Revisionist have submitted that although the State Government has filed a Writ Petition in the High Court challenging the orders passed by this Authority on 29.11.2011 yet no stay has been granted against the final order of the Revisional Authority and as such the said order is still operative and binding on the State Government. The Revisionist have submitted that despite the pendency of the Writ Petition

the Hon'ble High Court vide its order dated 16.5.2013 has directed the respondents to resume mining operation.

20. The Revisionist in their rejoinder to the reply given by the State Govt. have submitted that once the State Govt. has allowed the Petitioner to dispatch the material and accordingly the Deputy Director of Mines, Joda Circle, District Keonjhar has communicated the decision of the State Government that the order of the Hon'ble Supreme Court dated 21.3.2012 would be complied with and that the lease of the Revisionist stand restored with all consequential benefits and when the Revisionist was already allowed to apply for lifting permission of the raised ores, there is no reason to stop the revisionist to lift the raised ores. The Revisionist has apprehended that after giving the aforesaid transit permit some of the officials of the State Govt. have raised the issue that since the instant revision petition is pending before this Authority, further transit permit should not be grated till the matter is decided by this Revisional Authority.

21. The Revisionist in the rejoinder have reiterated the averments made in the RA and have controverted the contentions and submissions submitted by the State Government. They have reiterated their views in the oral submissions followed by written arguments.

22. I have carefully examined the facts on record and the submissions and arguments submitted by the Revisionist as well as on behalf of the State Government. It appears to be an admitted fact that that the impugned order is contrary to the findings and orders of this Tribunal in RA No.22(6)/201-RC-1 dated 29.11.2011. The State Government has challenged the said decision in the High Court but as stated by the Revisionist, there is no "stay" grated by the Hon'ble High Court and as such the said findings and the order are valid and operative. Any findings contrary to that, till the matter is decided, cannot be tenable in the eye of law. The arguments advanced by the Revisionist in this regard merit consideration.

23. The impugned order has also been challenged by the Revisionist on the ground that it has been passed without giving any opportunity of hearing and no show cause notice was issued before passing the impugned order so as to enable the Revisionist to submit his view point. The State Government has not denied the allegation but on the other hand, contended

that the assessment of legally and illegally raised ore is based on the physical survey of the area and examination of the dimensions of pits dug and their respective locations. The State Government's contention is that prior notice to the Revisionist could have caused the Revisionist to interfere in the process of investigation. This contention of the State Government cannot, however, be accepted as valid. The findings of the facts without hearing the other side cannot be held to be tenable in the eye of law. A physical survey of the area and examination of the dimensions of the pits cannot be done behind the back of the affected party and if it is so done, it cannot be held to be sustainable. While disposing of the SLP filed by the State Government, the Supreme Court has also very clearly directed the State Government to determine the area by an appropriate method and not by guess work.

24. In view of the observations above, the impugned order is set aside and this Revision Application is allowed. The State Government may, however, cause re-verification in presence of the Revisionist or their duly authorized representative and pass appropriate orders after giving adequate opportunity to the Revisionist firm to present their view point.

The RA accordingly stands allowed.

(Arun Kumar)
Joint Secretary & Revisionary Authority