M/s PALLAVA GRANITE INDUSTRIES (INDIA) PVT. LTD. A

v.

UNION OF INDIA AND ORS.

NOVEMBER 7, 2006

[ARIJIT PASAYAT AND S.H. KAPADIA, JJ.] B

Mines and Minerals (Regulation and Development Act, 1957—Sections 9A, 17A(2)—Andhra Pradesh Land Reforms (Celling on Agricultural Holdings) Act, 1973; Section 14—Andhra Pradesh Minor Mineral Concession Rules, 1966; Rule 9A(1)—Government Order issued by State to lease out lands to appellants for mining purposes but was immediately withdrawn—State thereafter reserved the right of exploitation of lands by its State owned Corporation in public interest and sought approval from Central Government, which was granted—High Court dismissed the Writ Petitions of the appellants—Correctness of—Held, in law, a Government Order cannot fetter or hamper future executive action/decision in public interest—On facts, the said Order was only a decision to grant mining lease and not a grant by itself—Central Government approval was not conditional—State withdrew its Government Order in public interest and hence the action of the State is not **mala fide** *or a colourable exercise of power.* C D E

State issued a Government Order (G.O.) to lease out the lands surrendered by landholders under Section 11 of the Andhra Pradesh Land Reforms (Ceiling on Agricultural Holdings) Act, 1973 to appellants for mining purposes. The State withdrew the G.O. when it was challenged in a Public Interest Litigation. The appellants filed Writ Petitions before High Court challenging the withdrawal of the G.O. which was allowed holding that the withdrawal of the G.O. was void *ab initio* for not following the principles of natural justice and directed the State to execute lease in favour of the appellants. The Writ Appeals filed by the State were dismissed by the High Court but making an observation that the State is not prevented from taking steps to cancel the G.O. in accordance with law. F G

The State issued show cause notices to the appellants for cancellation of mining rights. The appellants challenged the notices by filing Writ Petitions before the High Court. Pending the Writ Petitions,

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A the State issued two G.Os. under Rule 9-A(l) of the Andhra Pradesh Minor Mineral Concession Rules, 1966 reserving the right of exploitation of the land by its State owned Corporation in public interest. The said two G.Os. were challenged by filing Writ Petitions before the High Court on the ground of not obtaining prior approval of the Central Government under section
B 17A(2) of the Mines and Minerals (Regulation and Development) Act, 1957. Pending the Writ Petitions, the State sought approval from the Central Government which was granted subject to two conditions.

The appellants filed Writ Petitions before the High Court seeking declaration that the two G.Os. are illegal and void; that the show cause notices
C issued by the State Government should be quashed; that the grant of approval by the Central Government was illegal, void and unenforceable; and that the cancellation and revocation of mining lease applications was arbitrary and illegal. The High Court allowed the Writ Petitions. The Writ Appeals filed by the State were allowed by the High Court.

D In appeals to this Court, the appellants contended that the G.O. conferred on them a right for mining purposes; that the rights stood crystallised in favour of them by the binding decisions of the High Court; that the conduct of the State show a colourable exercise of power to circumvent the binding decisions given by the High Court; that the two G.Os. issued were illegal and
E void *ab initio* for want of previous approval by Central Government; that the approval of the Central Government was invalid since section 17 (A) (2) of the Mines and Minerals (Regulation and Development) Act, 1957 does not contemplate conditional approval; and that the approval granted by the Central Government stood vitiated on account of non-application of mind.

F The State contended that the said G.O. did not create any interest or right in favour of the appellants; that the G.O. did not amount to crystallisation of any right in favour of the appellants; that the appellants did not make any application seeking mining lease and hence cannot claim proprietary rights as the State did not execute a mining lease in prescribed form under the Act; that the State has decided to invite global tenders for exploitation of galaxy
G granite and to earn revenue and profits and hence it cannot be said that the conduct of the State was *mala fide* or that the State has undertaken colourable exercise of power to circumvent the High Court judgment.

Dismissing the appeals, the Court

H HELD: 1.1. The G.O. was not a grant but at the highest a decision of

the State Government to execute a lease in favour of the appellants for mining purposes. There is no evidence of the appellants being put in possession, as claimed. The G.O. was a decision to grant a mining lease in favour of the appellants but not constituted a grant by itself. Even if it constituted a grant by itself, such a grant cannot fetter or hamper future executive action/decision to revoke the grant in public interest. The G.O. to grant mining leases to the appellants cannot hamper or fetter the power of the State to exploit the resources through its own agency. There is no mala fide in the decision of the Government reserving the area for exploitation by its State Corporation, either on its own or through its joint ventures/partners.

[650-B, C, E, F; 651-A]

1.2. The State Corporation was entitled to enter into joint venture agreements with private partners. The alleged condition attached to the approval of the Central Government was not to annul the transaction but only to render it subservient to the rights of the parties to the litigation. If the appellants were to succeed in the pending litigation, they had the monetary claim against the joint venture. Therefore, in order to put the third parties to notice, the above condition was incorporated. Such a condition did not make the approval a conditional approval and therefore it is not hit by section 17A(2) of the Mines and Minerals (Regulation and Development) Act, 1957.

[651-D, E, F]

1.3. The property belongs to the State Government. The State has decided to earn more revenue by inviting global tenders. The State has obtained the prior approval of the Central Government. The Central Government has restricted its approval to an area. In the circumstances, there is no illegality in the State Government's order of reserving the area for mining operations through its State Corporation or through private/public sector enterprises. The rights, if any, under the G.O. were inchoate rights. These rights never stood crystallised. No mining lease was ever granted by the State Government to the appellants. In the circumstances, there was no bar in reserving the area for exploitation of galaxy granite through State public sector undertakings. [652-B, C, D]

Antoni Buttigieg v. *Stephen H. Cross,* AIR (1947) Privy Council 29 and *Edward Keventers (Successors) Pvt. Ltd.* v. *Union of India etc.,* AIR (1983) Delhi 376, referred to.

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 4702 of 2006

From the final Judgment and Order dated 24.3.2004 of the High Court

of Judicature Andhra Pradesh at Hyderabad in W.A. Nos. 1000,1004,1007,1045,1046 and 1048 of 2002.

WITH

C.A. Nos. 4703, 4704, 4705, 4706, 4707, 4708, and 4709 of 2006 and Cont. Pet. (C) No. 157/2006 in SLP (C) No. 20225-20228/2005.

Vikas Singh, A.S.G., Mukul Rohatgi, A.K. Ganguli, R.F. Nariman, Dushyant A. Dave, P.P. Rao, Altaf Ahmad, Anoop G. Choudhary, K. Ramakrishna Reddy, K.B. Sandeep, Mayur R. Shah, K.K. Mani, P.N. Ramalingum, S. Udaya Kumar Sagar, Amit Sibal, Bina Madhavan (for M/s. Lawyer's Knit & co.), Deshmeet Singh Chadha, Abhishek kumar, Anshuman Ashok, Purshottam Tripathi, A, Subba Rao, G.N. Reddy, V.G. Pragasam, Sunita Sharma, V.K. Verma, D.S. Mahra, Manoj Saxena, Rajnish Singh, Rahul Shukla, Tripurari Rai, Ajay Siwach and T.V. George for the appearing parties.

The judgment of the court was delivered by

KAPADIA, J. Leave granted in Special Leave Petitions.

In this batch of civil appeals by grant of special leave to appeal two questions arise for determination, namely, whether the G.O.No.1290 dated 27.8.91 constitutes a decision to grant or whether it constitutes a grant of mining lease *per se* and secondly whether the decision to revoke the said G.O. was actuated by *mala fides* in order to deprive the appellants of their mining rights.

For the sake of clarity we reproduce herein the facts in the case concerning M/s. Rita Industrial Corporation Ltd....Appellant in C.A. Nos. of 2006 @ S.L.P. (C) Nos. 20225-28 of 2005, they are as follows:

An area admeasuring Acs. 86.50 in Survey no. 55/5 of Village Rajupalem-Lakshmipuram, Cheemakurthy Mandal, Prakasam District, Andhra Pradesh, being agricultural lands vested as surplus lands under Section 11 of the Andhra Pradesh Land Reforms (Ceiling on Agricultural Holdings) Act, 1973 (for short, "the 1973 Act") in the State Government. These lands were surrendered by the land holders under the said 1973 Act to the State Government. Later on, it was realised that these lands had galaxy granites and, therefore, proposals were made by the Collector, District Prakasam, the Commissioner of Land Reforms and the Director of Mines and Geology to

lease out the said area for mining purposes. By G.O. No. 1290 dated 27.8.91, the State Government accepted the above proposals and decided to appropriate by leasing out the lands for mining under Section 14(6) of the 1973 Act; that out of the total area of the surrendered lands admeasuring Acs. 86.50, an area admeasuring Acs. 60 be leased out to the four appellants, namely, M/s. Rita Industrial Corporation Ltd., M/s. Upendra Granites, M/s. Acropolis Granites Ltd. and M/s. Pallava Granite Industries Ltd. and that each of the appellant was to be given Ac. 15 for mining purposes. Under the said G.O. No. 1290, the State Government stated that Acs. 15 each be leased out to the above four firms on the terms and conditions in G.O. No. 876 dated 3.6.89 subject to the modification that the lease shall be for 10 years and the lessees shall pay Rs. 600/- per acre, per annum for the first five years and Rs. 900/- per acre, per annum for the remaining five years. By the said G.O. the Collector, District Prakasam, was requested to take further action by making proper allotment of land keeping in view the principle of contiguity.

The said G.O. No. 1290 was challenged in a PIL. When the notice of the PIL was received by the State Government, G.O. No. 1361 dated 11.9.91 came to be issued by which the earlier G.O. No. 1290, stood cancelled. This cancellation was challenged by M/s. Rita Industrial Corporation Ltd. vide Writ Petition No.12386 of 1991 in the High Court.

By judgment and order dated 18.10.96, the learned Single Judge of the High Court held that the cancellation of G.O. No. 1290 was *ab initio* void for want of hearing and reasons in support of the cancellation. By the said judgment of the learned Single Judge, the District Collector was directed to execute the surface lease in favour of M/s. Rita Industrial Corporation Ltd. in terms of G.O. No. 1290. By the said judgment the Director of Mines and Geology was also asked to dispose of the application made by M/s. Rita Industrial Corporation Ltd. for mining lease in accordance with law.

Being aggrieved by the judgment, the State Government preferred Writ Appeal No. 672 of 1997. Pending the said writ appeal, the Collector, District Prakasam, wrote to the Director of Mines and Geology stating that in view of the judgment dated 18.10.96 he had no objection to the grant of mining lease to the extent of Acs. 15 in terms of G.O. No. 1290. Similarly, by letter dated 18.2.97 addressed by Deputy Director of Mines and Geology to Director of Mines and Geology, a request was made to consider the mining lease application filed by M/s. Rita Industrial Corporation Ltd. *in terms of the* judgment of the learned single judge dated 18.10.96. In the said letter, the Dy.

A Director has stated that since the Collector, District Prakasam, had allotted the land lease to M/s. Rita Industrial Corporation Ltd. there could be no objection to grant quarry lease over an extent of Acs. 15 in Survey no. 55/5. Along with the said letter dated 18.2.97 an inspection report was enclosed. This inspection report was prepared by Dy. Director of Mines and Geology. In the said inspection report it was stated that in terms of the judgment of the B learned Single Judge dated 18.10.96 the Collector had handed over the lands to M/s. Rita Industrial Corporation Ltd.; that the Collector had agreed to grant the land lease and, therefore, till the judgment dated 18.10.96 remains in force, M/s. Rita Industrial Corporation Ltd. had a right to obtain a mining lease. Accordingly, the Dy. Director requested the Director of Mines and Geology C to take a decision on the quarry application of M/s. Rita Industrial Corporation Ltd. at the earliest. A survey report was also annexed with the letter dated 18.2.97 in which it was recited that the Dist. Collector had given N.O.C. for the grant of quarry lease and, therefore, the application made by M/s. Rita Industrial Corporation Ltd. for grant of quarry lease may be disposed at the earliest.

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By judgment and order dated 27.6.97, the Division Bench disposed of the above-mentioned Writ Appeal No. 672 of 1997 stating that there was no infirmity in the judgment of the learned Single Judge dated 18.10.96; that, there was violation of the rules of natural justice inasmuch as the decision E to cancel G.O. No. 1290 was taken without hearing and without giving reasons and was therefore void and accordingly the writ appeal was dismissed. However, it was made clear by the Division Bench that its judgment and order dated 27.6.97 will not prevent the Government from taking steps to cancel G.O. 1290, if such right exists in the Government, in accordance with law.

F Accordingly, a show cause notice was issued by the State Government on 21.2.98 to the appellants. That show cause notice was challenged vide Writ Petition No. 6098 of 1998. Pending the said writ petition, the State Government issued G.O. Nos. 267 and 268 on 27/29.9.97 under Rule 9-A(1) of the Andhra Pradesh Minor Mineral Concession Rules, 1966 (for short, "the 1966 Rules"). Under the said G.Os. the State Government, after examination G of the report of the Director of Mines and Geology, ordered that an area admeasuring Acs. 61.50 in Survey no. 55/5 shall be reserved for exploitation by Andhra Pradesh Mineral Development Corporation Limited which is a State-owned Corporation (for short, "APMDC"), in public interest.

H These G.O. Nos. 267 and 268, however, were issued without prior approval

of the Central Government under Section 17A(2) of the Mines and Minerals (Regulation and Development) Act, 1957 (for short, "the 1957 Act"). These G.O. Nos. 267 and 268 were challenged by filing writ petitions mainly on the ground that they were invalid as prior approval of the Central Government was not obtained. These writ petitions were filed in October 1997. On 24.10.97 pending the writ petitions the State Government sought approval of the Central Government stating that APMDC is a State-owned company, set up to acquire mining rights from the Government; that the Corporation is a profit making organisation; that the Corporation is equipped with expertise and machinery to undertake mining in a scientific manner; that the State Government had identified Acs. 61.50 in Survey no. 55/5 for exploitation of galaxy granite and accordingly the Central Government was asked to grant its approval under Section 17A(2) of the 1957 Act. By letter dated 23.7.99, the Central Government enquired from the State Government whether there existed any order of injunction from the competent court in the pending writ petitions. Ultimately, the Central Government vide letter dated 29.10.99 gave its approval for reservation of Acs. 61.50 of granite bearing area in Survey no. 55/5 out of the total area of Acs. 86.50 subject to two conditions, namely, that the reservation shall not be applicable to areas held under mining or quarry lease; and secondly, that the approval granted shall be subject to the outcome of pending court cases.

In terms of the said approval the State Government on 14.2.2002 issued G.O. No. 72 (later on published in the Official Gazette of A.P. as Notification No. 88 dated 26.2.97). By the said G.O. No. 72 an area admeasuring Acs. 61.50 was declared as granite bearing area. In the said G.O. No. 72 there is a reference to the approval granted by the Government of India. The said G.O. further stated that it was issued without prejudice to G.O. Nos. 267 and 268 dated 27/29.9.97.

The above G.O. No. 72 dated 14.2.97 became the subject-matter of the second round of litigation which has given rise to these civil appeals.

In the second round of litigation appellants sought the declaration that G.O. Nos. 267 and 268 were illegal and void; that the show cause notice dated 21.2.98 issued by the State Government should be quashed; that the grant of approval dated 29.10.99 by the Central Government was illegal, void and unenforceable; and lastly that the cancellation and revocation of mining lease applications, was arbitrary and bad in law.

A By judgment and order dated 28.3.2002, the learned Single Judge set aside G.O. Nos. 267 and 268 on the ground that prior approval of the Central Government was not obtained. Accordingly, the show cause notice dated 21.2.98 was also set aside. The Court further held that the State Government did not disclose to the Central Government the fact that the appellants were holding leases which were the subject-matter of the pending writ petitions in B the High Court and consequently the State Government had violated the above two conditions imposed by the Central Government in its approval dated 29.10.99. Consequently, the learned Single Judge held that the orders cancelling the land leases and the decision to reject the applications for grant of mining leases, was illegal and accordingly set aside the decision of the C State Government rejecting the applications made for grant of mining leases. By the said decision the State Government was directed to consider the mining lease applications afresh and dispose of the same in accordance with law.

Being aggrieved by the decision of the learned Single Judge, the State D Government went in writ appeal to the Division Bench. By impugned judgment dated 24.3.2004, the Division Bench after reciting the above facts and after taking into account the arguments advanced before it held that it was totally unnecessary to examine the validity of G.O. Nos. 267 and 268 respectively since vide subsequent decision dated 29.10.99 the Central Government had E granted approval for reserving an area admeasuring Acs. 61.50 as granite bearing area. Since the Central Government had granted approval the subsequent G.O. No. 72 dated 14.2.2002 cannot be faulted. By the aforestated judgment the Division Bench took the view that G.O. No. 72 dated 14.2.2002 was issued after obtaining prior approval from the Central Government and, therefore, the said G.O. did not suffer from any legal or constitutional infirmities. F The Division Bench further held that the decision to cancel G.O. No. 1290 was valid; that the reservation of an area admeasuring Acs. 61.50 was in public interest and that there were no *mala fides* in cancelling G.O. No. 1290 as alleged by the appellants.

Aggrieved by impugned judgment dated 24.3.2004 allowing the writ G appeals filed by the State Government, the appellants have come to this Court by way of special leave to appeal.

Before coming to the arguments advanced before us, we are required to summarise the relevant provisions concerning the 1973 Act, the 1966 Rules and the 1957 Act read with the Mineral Concession Rules, 1960. H

The 1973 Act is an Act to consolidate and amend the law relating to the fixation of ceiling on agricultural holding and taking over of surplus lands and to provide for the matters connected therewith. The said Act provides for the imposition of a ceiling on agricultural holdings ranging from Acs.27 to Acs. 324 depending upon the class of land. Under Section 14(1) of the said Act the surplus lands vested in the Government are to be allotted for use as house-sites for agricultural labourers and village artisans or transferred to the weaker sections of the society depending on agriculture. The main purpose of the Act is to distribute agricultural land among the landless and other persons to subserve the common good and to limit the extent of land to be held by a person.

Section 14 of the said Act deals with disposal of land vested in the Government. Section 14(6) begins with a non-obstante clause. It enables the Government to lease out any land vested in it for such purposes and on terms and conditions as may be specified. It also enables the Government to reserve such land for any common use or benefit of the community.

In the Seventh Schedule to the Constitution, in the Union List, Entry 54 provides for regulation of mines and minerals to the extent to which such a regulation under the control of the Union is declared by Parliament, by law, to be expedient in public interest. Accordingly, the 1957 Act provides for the development and regulation of mines under the control of the Union. Under Section 3(c) "mining lease" is defined to mean a lease granted for the purpose of undertaking mining operations, and includes a sub-lease granted for such purpose. Section 5 deals with restrictions on the grant of prospecting licences or mining leases. Under Section 5(1) it is, *inter alia,* provided that a State Government shall not grant a mining lease unless such a person is an Indian national or a company as defined under Section 3(1) of the Companies Act, 1956 and satisfies such conditions as may be prescribed. There is a proviso to Section 5(1). This proviso lays down that no mining lease, in respect of any mineral specified in the First Schedule, shall be granted without the prior approval of the Central Government. Under Section 5(2) no mining lease is to be granted by the State Government unless it is satisfied that an area, for which the lease is sought, has been prospected earlier and that there is a mining plan duly approved by the Central Government. Section 8 deals with perioas for which mining leases may be granted. Section 13 concerns power of Central Government to make rules in respect of minerals. Section 15 concerns power of State Governments to make rules in respect of minor minerals. In exercise of the powers, conferred by Section 15(1) of the 1957

A Act, the State Government has framed the 1966 Rules. Rule 8 concerns the form in which the lease deed shall be executed. This is because under Rule 5 of the 1966 Rules, no person can undertake quarrying of any mineral except in accordance with a quarry lease or a permit. The mining lease has to be executed in Form 'G'. Rule 9-A of the 1966 Rules reads as under:

B "9-A. *Reservation of areas for exploitation in the public sector, etc.*—(1) The State Government may, by notification in the Official Gazette, reserve any area for exploitation by the Government, a Corporation established by any Central, State or Provincial Act or a Government Company within the meaning of Section 617 of the
C Companies Act, 1956 (Central Act 1 of 1956).

(2) Availability of area for regrant to be notified:- No area which has been reserved by the Government under Rule 9-A(1) shall be available for grant of quarry lease unless the availability of the area for grant is notified in the Official Gazette specifying a date (being a
D date not earlier than thirty days from the date of the publication of such notification in the Official Gazette) from which such area shall be available for grant.

(3) Premature applications: Applications for the grant of a quarry lease in respect of areas whose availability for grant is required to be
E notified under Rule 9-A (2) shall if,

(a) no notification has been issued under that rule; or

(b) Where any such notification has been issued, the period specified in notification has not expired, shall be deemed to be
F premature and shall not be entertained; and the application fee thereon, if any paid, shall be refunded (Added in G.O. Ms. No. 310, Ind. & Com., dt. 11.7.84)"

Section 17A of the 1957 Act concerns reservation of area for purposes of conservation. Under Section 17A(1) the Central Government, with a view
G to conserving any mineral and after consultation with the State Government, may reserve any area not covered by a mining lease by issuing a notification in the Official Gazette. The said notification will specify the boundaries of the reserved area. Under Section 17A(1A) the Central Government may in consultation with the State Government reserve any area not covered by a mining lease for undertaking mining operations through a Government
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company or corporation, owned or controlled by it. Under Section 17A(2) the State Government may, with the approval of the Central Government, reserve any area not covered by any existing mining lease for undertaking mining operations through a Government company or corporation and where it proposes to do so it shall, by notification in the Official Gazette, specify the boundaries of such area and the mineral in respect of which such area will be reserved.

In this case, we are concerned with Section 17A(2) of the 1957 Act. In exercise of the powers conferred by Section 13 of the 1957 Act, the Central Government has enacted the 1960 Rules. The said Rules require making of an application for the grant of mining lease in respect of the land in which the minerals vest in the Government of State.

Mr. P.P. Rao, learned senior counsel appearing on behalf of M/s. Rita Industrial Corporation Ltd.-Appellant, submitted that G.O. No. 1290 dated 27.8.91 conferred on the appellant the right to get a lease of Acs. 15 in Survey no. 55/5 for mining purpose. In this connection, the learned counsel urged that the State Government being the competent authority for granting surface rights over the land and also for granting mining lease under Section 5(1) of the 1957 Act after sanctioning the lease in favour of the appellant, had directed the District Collector to implement G.O. No. 1290. Further, learned counsel urged that in the earlier round of litigation, the learned Single Judge vide judgment dated 18.10.96 had directed the District Collector in Writ Petition No. 12386 of 1991 to enter into surface lease with the appellant in respect of the land admeasuring Acs. 15 in Survey no. 55/5; that, by the said judgment the Director of Mines and Geology was also directed to consider the appellant's application for grant of mining lease in accordance with law and accordingly by reason of the said judgment dated 18.10.96 an important right stood conferred on the appellant to obtain the land lease from the District Collector and a further right to get the application for grant of mining lease disposed of by the Director of Mines and Geology. This judgment dated 18.10.96, according to learned counsel, got affirmed by the Division Bench holding that there was no illegality in the judgment dated 18.10.96 and consequently it was urged that the State Government was bound to implement the directions contained in the judgment dated 18.10.96. Learned counsel submitted that it was not open to the State Government to evade the implementation of the judgment of the High Court dated 18.10.96 by taking recourse to cancellation of G.O. No. 1290 or by taking recourse to the reservation of the area in favour of APMDC. It was further submitted that rights became crystallized in favour

A of the appellants by reason of the said judgment dated 18.10.96 affirmed by the Division Bench, which rights cannot be obliterated by cancellation of G.O. No. 1290 or by reservation in favour of APMDC.

The learned counsel for the appellant further submitted that G.O.Nos.267 and 268 were illegal and void *ab initio* for want of previous approval granted B by the Central Government. In this connection, reliance was placed on the provisions of Section 17A(2) of the 1957 Act. In this connection, learned counsel urged that the said G.O. Nos. 267 and 268 purported to reserve granite bearing area for exploitation by APMDC which required prior approval of the Central Government and since such approval was not obtained the said C G.Os. were rightly set aside in the second round of litigation by the learned Single Judge vide judgment dated 28.3.2002.

The learned counsel for the appellant next contended that the approval granted by the Central Government on 29.10.99 was not in accordance with law for the following reasons:

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(a) While granting approval, the Central Government referred to letter dated 24.10.97, letter dated 13.2.98, letter dated 5.11.98 and letter dated 23.12.98 received from the State Government; that, the Central Government failed to take notice that in the last communication dated 23.12.98, the State Government had placed E a new proposal for reservation of the entire granite bearing areas exceeding Acs. 61.50 in favour of APMDC.

(b) That, this last proposal was made in substitution for reservation of Acs. 61.50 only. According to the learned counsel, the Central Government in its approval dated 29.10.99 did not refer to the F contents of the last proposal dated 23.12.98 which shows that the Central Government gave its approval only to the proposal dated 24.10.97 for reserving Acs. 61.50 and which, according to the learned counsel, shows non-application of mind on the part of the Central Government.

G (c) That, the grant of approval by the Central Government dated 29.10.99 stood vitiated by non-application of mind since the State Government had superceded its earlier communication dated 24.10.97 by a subsequent proposal dated 23.12.98.

In the circumstances, it was urged that the approval granted on 29.10.99 H was liable to be set aside.

It was further submitted that the scheme under Section 17A of the 1957 Act is not to disturb the existing rights which stood crystallized in favour of the appellants vide G.O. No. 1290; that, the grant of mining lease, cannot be set at knot by the State Government by cancellation of the said G.O.No.1290 or by reserving the area allotted to the appellants for exploitation by APMDC. On behalf of the appellants it was urged that the entire exercise undertaken by the State Government was to defeat the rights of the appellants which has crystallized by reason of the judgment dated 18.10.96. Accordingly, it was submitted that the decision to reserve the said area admeasuring Acs. 61.50 as granite bearing area stood vitiated by mala fides. According to the learned counsel, the entire exercise constituted colourable exercise of power under Section 17A(2) of the Act. In this connection, it was further urged that the said section did not contemplate conditional approval. In this connection, it was pointed out that in the approval granted by the Central Government dated 29.10.99 two conditions were stipulated, namely, that the reservation shall not apply to areas covered by existing mining leases/quarry leases and that the approval was subject to the outcome of pending court cases. The learned counsel submitted that such conditional approvals run counter to Section 17A(2) and, therefore, the approval granted by the Central Government dated 29.10.99 was bad in law. It was urged that such conditional approvals do not permit mining operations to be carried out by the Government Corporation till the pending cases are decided and if the granite is exploited during the pendency of the cases it would have the effect of defeating the claims for mining leases in respect of that very area for which litigation is pending and which would amount to interference in the exercise of judicial power. Moreover, while seeking approval of the Central Government, the State Government had not brought to the notice of the Central Government that, in fact, leases were already granted to the appellants, that the appellants were in possession of the land; that the writ petitions were pending in the High Court and that if all these particulars were to be submitted to the Central Government, it would not have granted the approval. According to the learned counsel, the approval dated 29.10.99 came to be issued on account of non-disclosure of material facts by the State Government and, therefore, it ought to have been set aside by the Division Bench.

On the above grounds, appellants have also challenged G.O. No. 72 dated 14.2.2002 which is based on the approval granted by the Central Government on 29.10.99. In this connection, it was urged that the said G.O. No. 72 was not valid as it did not stipulate the conditions subject to which the Central Government gave its approval on 29.10.99 and that, by the time

A the said G.O. came to be issued the State Government had withdrawn its proposal dated 23.12.98 except in respect of Acs. 61.50 to which there was no response from the Central Government.

Lastly, it was urged on behalf of the appellants that during the pendency of the civil appeals, the State Government by a Memo dated 14.3.2006 permitted B exchange of areas between APMDC and M/s. Victorian Granite Private Limited in order to deprive M/s. Rita Industrial Corporation Ltd. of its rights in the mining lease; that without the approval of the Central Government under Section 17A(2) of the 1957 Act it was not permissible to exchange the lands and therefore the said Memo dated 14.3.2006 was unlawful and invalid in law C and should be set aside by this Court.

In conclusion, it was urged on behalf of the appellants that the entire conduct of the State and its officers show a colourable exercise of power to circumvent the binding directions given by the High Court in favour of the appellants vide judgment dated 18.10.96 and to frustrate the rights which have D accrued to the appellants on account of G.O. No. 1290 which was partly implemented by the Collector, District Prakasam, by his communications to Director of Mines and Geology dated 10.1.97 and by giving of possession of the land to the appellants after demarcation and survey made by the officers of the Revenue Department.

E While adopting the arguments of Shri P.P. Rao, learned counsel for M/s. Pallava Granite Industries Ltd. submitted that reservation by the State Government without adjudication of the show cause notice dated 21.2.1998 invalidated G.O. No. 72 dated 14.2.02 particularly when G.O. No. 1290 was in the nature of government grant. It was urged that by G.O. No. 72 the vested rights cannot be obliterated particularly when the scheme of Section 17A(2) F of the 1957 Act is not to interfere with such rights.

Mr. Anoop G. Chaudhary, learned senior counsel appearing on behalf of State of Andhra Pradesh, submitted that the said G.O. No. 1290 dated 27.8.91 did not create any interest or right in favour of any of the appellants. G He submitted that the said G.O. indicates that proposals were made by certain officers of the State Government to release the lands declared as surplus under Section 14(6) of the 1973 Act in order to exploit galaxy granite by granting lease to private parties, namely, the appellants. The learned counsel submitted that the said G.O. was only an acceptance of the proposals made by the District Collector, Commissioner of Land Reforms, the Director of

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Mines and Geology and the requests made by the above-mentioned four applicants. Therefore, according to the learned counsel, the said G.O. No. 1290 did not amount to crystallization of any right in favour of the appellant, as alleged. In this connection, it was further pointed out that in this case there is no execution of surface lease; that there is no application in the prescribed form made by any of the appellants seeking mining lease; that the Government till date has not executed a mining lease in Form 'G' and in the circumstances no proprietary right could be claimed by the appellants. It was submitted further that the decision to grant the lease vide G.O. 1290 stood withdrawn by the subsequent G.O. No. 1361 followed by the decision to reserve the area admeasuring Acs. 61.50 for exploitation by APMDC either by itself or through joint venture. In this connection it was urged that the State has decided to invite global tenders for exploitation of galaxy granite and to earn revenue and profits and, therefore, there is no merit in the submission made on behalf of the appellants that the conduct of the State Government was mala fide or that the exercise undertaken by State of Andhra Pradesh was colourable exercise of power to circumvent the judgment of the High Court dated 18.10.96.

Mr. Altaf Ahmad, learned senior counsel, appearing on behalf of APMDC invited our attention to the topographical picture of Acs. 86.50 of land in question in Survey no. 55/5. He submitted that the Memo dated 14.3.2006 had to be issued by the State Government allowing exchange of areas between APMDC and M/s. Victorian Granite Private Limited in order to form a compact area of land in which APMDC could operate and excavate the granite; that this exchange became necessary since the land earlier leased to M/s. Victorian Granite Private Limited on 2.4.94 admeasuring Acs. 25 obstructed the formation of a compact area. It was submitted that no prior approval for the said exchange was required to be obtained from the Central Government under Section 17A(2) of the 1957 Act; that such approval was required if the boundaries of the reserve area stood altered. The learned counsel urged that in the present case the boundaries of the reserve area admeasuring Acs. 61.50 remained unaltered and, therefore, prior approval of the Central Government was not required.

The submissions made by the learned counsel appearing on behalf of the APMDC were adopted by Mr. R.F. Nariman, learned senior counsel appearing on behalf of M/s. Victorian Granite Pvt. Ltd. Mr. Nariman, further pointed out that in the matter of readjustment within the demarcated boundary, prior approval of the Central Government was not required under Section

A 17A(2) of the 1957 Act. The learned counsel further pointed out that the decision to exchange the lands was a business decision; that the said decision was taken keeping in mind that an area under lease dated 2.4.94 in favour of M/s. Victorian Granite Pvt. Ltd. contained 2,60,000/- cubic meter of granite as on 14.3.2006; that M/s. Victorian Granite Pvt. Ltd. had a valid quarry lease in its favour commencing from 1994 till 2007; and that the exchange was B undertaken in order to have convenient mining operations in a contiguous area by shifting the lease-hold areas of M/s. Victorian Granite Pvt. Ltd. to one end in the said Survey no. 55/5 so that a compact mining area of Acs. 61.50 is available to APMDC. It was further pointed out that before taking the above decision concerning exchange of lands two reports of the high-level C committees have examined the viability of the said exchange and, therefore, it cannot be said that Memo dated 14.3.2006 concerning exchange of lands was actuated by *mala fides* or arbitrariness. According to the learned counsel the exchange was in the interest of APMDC.

Mr. Vikas Singh, learned Additional Solicitor General of Union of India, D submitted that Memo dated 14.3.2006 is the subsequent development. According to the learned counsel, in view of Section 17A(2) of the 1957 Act, the State Government should have taken prior approval before issuing the said Memo dated 14.3.2006. The learned counsel submitted that this aspect is under consideration by the Central Government and it will take action in accordance with law in near future.

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The short question which needs to be answered is: whether on the facts and circumstances of this case the said G.O. No. 1290, being a decision to grant a mining lease constituted a fetter on the executive powers of the State Government to recall its decision in public interest.

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At the outset, we are of the view that G.O. No. 1290 is not in the nature of the grant as alleged. In this connection we may recapitulate that the 1973 Act stood enacted to consolidate and amend the law relating to the fixation of ceiling on agricultural holdings and taking over the surplus lands. The land in question fell in the category of surplus lands. These surplus lands G in Survey no. 55/5 stood vested in the Government under the 1973 Act. These surplus lands were frozen under Prohibitory Order Book (POB). Subsequently it was detected that these lands contained galaxy granite. It was an important asset for the government. This aspect needed exploitation. Therefore, a proposal was made by the various authorities referred to above to release these lands from POB and to allow these lands to be exploited by

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private parties so that the State could earn revenue. Under the said 1973 Act these lands were meant for the benefit of the weaker sections. Therefore, they were kept under POB. However, in order to earn larger revenues the Government accepted the proposal to exploit the above-mentioned granite. This is done through G.O. No. 1290. This was the primary purpose of the said G.O. Conferment of rights on the appellants was not the main purpose of the said G.O. In fact, as stated above, the said G.O.No.1290 was issued on 27.8.91 and within one month it was withdrawn on 18.10.91. As stated above, when the said G.O. was issued on 27.8.91 a public interest litigation, Writ Petition No.2356 of 1991, was filed in the High Court. On receipt of notices from the High Court in the said PIL the said G.O. was withdrawn.

In the case of *Antoni Buttigieg* v. *Stephen H. Cross,* AIR (1947) Privy Council 29, it has been held that a government cannot by contract hamper its freedom of executive action in matters which concern the welfare of the State [See: page 31].

In the case of *Edward Keventers (Successors) Pvt. Ltd.* v. *Union of India etc.,* AIR 1983 Delhi 376, the Delhi High Court has held that every grant has to be subject to any future executive action, which must be decided by the needs of the community and that the Government cannot, by contract, hamper its freedom of action in matters concerning the welfare of the State [See: page 382].

Creation of a right or interest in the property is different from transfer of those rights/interests. Whether a particular transfer is a grant or not is a mixed question of law and fact. In this connection, we quote hereinbelow the relevant passage from *"The Transfer of Property Act"* by Dr. Sir Hari Singh Gour, 11th Edition, page 46:

> "It is further subject to any future executive action, which must necessarily be determined by the needs of the community when the question arises, as the Government cannot by contract hamper its freedom of action in matters which concern the welfare of the states.[1] Whether a particular transfer is a grant governed by the Government Grants Act or not is mixed question of law and fact. The character

1. [Rederiaktiebolaget Amphitrite v. King., (1921) 3 K.B. 500 and Antoni Buttigieg v. Stephen H. Cross, AIR (1947) PC 29. Chiragh Din v. Mahomed Usman Khan, AIR (1924) Lah. 281(2).

A of the land, the manner of making lease and its contents in this case all indicate that the lease in question was a Government grant and in the absence of any legislation prior or posterior thereto on its subject matter the lease shall take effect according to its tenor and will not be regulated by the provisions of the Transfer of Property Act unless justice, equity and good conscience require that the principles
B contained therein should be applied.[2]

Applying the above test to the facts of the present case, we are of the view that G.O. No. 1290 dated 27.8.91 was not a grant but at the highest a decision of the State Government to execute a lease in favour of the appellants
C for mining purposes. There is no evidence of the appellants being put in possession, as claimed. The correspondence between the authorities, referred to above, makes it very clear that the District Collector took steps of writing to the Dy. Director of Mines and Geology in terms of the directions contained in the judgment of the learned Single Judge dated 18.10.96. That decision was subject to the decision of the Division Bench dated 27.6.97. In that decision
D it was made clear that the direction given in the order dated 18.10.96 to the District Collector to enter into land leases, did not disable the State Government from taking steps to cancel G.O.No.1290 in accordance with law.

The question which arises for determination in this case is : whether the decision to cancel G.O.No.1290 was valid in law and whether that decision
E stood vitiated by *mala fides*.

As stated above, G.O.No.1290 was a decision to grant a mining lease in favour of the appellants. Even assuming for the sake of the argument that G.O.No.1290 constituted a grant by itself still, as held in the above decisions, such a grant cannot fetter or hamper future executive action/decision to
F revoke the grant in public interest. In the present case, the State Government detected an important source of revenue in the form of granite reserves. It is true that at one point of time the State Government decided to exploit the granite through private parties. However, later on with globalization, the State Government decided to go for global tender. This course of action was open
G to the State Government. The State Government decided to exploit the granite through its agency, namely, APMDC. The object was to earn commercial profits and revenue. APMDC was given liberty either to excavate the granite on its own or through joint ventures. The land belongs to the State

2. Edward Keventers (Successors) P. Ltd. v. Union of India, AIR (1983 Delhi 376, at pp.
H 381, 382.

Government. The granite belongs to the State Government. Therefore, a mere decision in G.O.No.1290 to grant mining leases to the appellants cannot hamper or fetter the power of the Government to exploit the resources through its own agency. In the circumstances, we do not find any mala fides in the decision of the Government reserving the area admeasuring Acs.61.50 for exploitation by APMDC, either on its own or through its joint ventures/ partners.

It has been vehemently urged before us on behalf of the appellants that the approval dated 29.10.99 contained in G.O.No.72 is invalid since Section 17A(2) of the 1957 Act does not contemplate conditional approval. In this connection, the following facts are required to be noted. The Central Government granted approval for reservation of an area admeasuring Acs. 61.50 subject to two caveats, namely, that the reservation shall not be applicable in case of areas already held under any mining lease or quarry lease and that the approval was subject to the outcome of pending cases. It was submitted on behalf of the appellants that such conditional approval did not permit mining operations to be carried out by the State Government Corporation till the pending cases were decided and, therefore, if APMDC is allowed to exploit during the pendency of the cases then the conditional approval would have the effect of defeating the claims for mining leases in respect of the very area pending adjudication. We do not find any merit in these arguments. As stated above APMDC was entitled to enter into joint venture agreements with private partners. The alleged condition attached to the approval dated 29.10.99 was not to annul the transaction but only to render it subservient to the rights of the parties to the litigation. If the appellants were to succeed in the pending litigation they had the monetary claim against the joint venture. Therefore, in order to put the third parties to notice the above condition was incorporated. Such a condition did not make the approval a conditional approval and, therefore, it is not hit by Section 17A(2) of the 1957 Act.

We also do not find any merit in the contention of the appellant that the approval dated 29.10.99 granted by the Central Government stood vitiated on account of non-application of mind. In the approval granted by the Central Government dated 29.10.99 the subject-matter referred to four communications, namely, letter dated 24.10.97, letter dated 13.2.98, letter dated 5.11.98 and letter dated 23.12.98. These letters were addressed by the State Government. The initial proposal of the State Government was to reserve an area admeasuring Acs.61.50 only in Survey no. 55/5 for exploitation by APMDC. However, later on in the last letter dated 23.12.98 the State Government

A proposed reservation for a larger area covering the entire granite bearing area to be exploited by the APMDC. It is equally true that while granting approval dated 29.10.99 the Central Government did not refer to the last proposal dated 23.12.98 and as a result gave its approval for reserving Acs.61.50 only. On that basis it is urged on behalf of the appellants that the Central Government had never applied its mind to the later proposal of the State Government and B consequently even the approval granted for reserving a limited area of Acs.61.50 stood vitiated on account of non-application of mind. As stated above, the property belongs to the State Government. The mineral vests in the State Government. The State has decided to earn more revenue by inviting global tenders. The State has obtained the prior approval of the Central Government. C The Central Government has restricted its approval to an area admeasuring Acs.61.50. In the circumstances, we do not find any illegality in the State Government's order of reserving the area admeasuring Acs.61.50 for mining operations through APMDC or through private/public sector enterprises. We reiterate that the rights, if any, under G.O.No.1290 were inchoate rights. These rights never stood crystallized. No mining lease was ever granted by the D State Government to the appellants. In the circumstances, there was no bar in reserving an area admeasuring Acs.61.50 for exploitation of galaxy granite through State public sector undertaking.

Before concluding one aspect needs to be mentioned. During the pendency of these civil appeals, the State Government permitted exchange of E areas between APMDC and M/s. Victorian Granite Pvt. Ltd. vide Memo dated 14.3.2006. This event took place during the pendency of the special leave petition. The question as to whether such an exchange required approval of the Central Government and whether such exchange was in the interest of the State exchequer, cannot be decided by us in the present proceedings. It is F a distinct and separate cause of action. We do not wish to express any opinion on the validity of the said exchange as well as on the merits of the said exchange. It is for the Central Government to examine the validity of the said exchange. In any event, it is a subsequent cause of action. Hence, we express no opinion on the validity of the said exchange.

G Subject to above, we do not find any merit in these civil appeals and the same are accordingly dismissed. Contempt petition, filed by M/s. Rita Industrial Corporation Ltd. during the course of pending of civil appeals, is also accordingly disposed of. No order as to costs.

B.S. Appeals dismissed.