GAHC010169672022

2026:GAU-AS:9435

THE GAUHATI HIGH COURT
(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)

Case No. : WP(C)/5631/2022

SIMPLEX INFRASTRUCTURES LIMITED
HAVING ITS REGD. OFFICE AT SIMPLEX HOUSE, 27, SHAKESPEARE SARANI, KOLKATA- 700017,IN THE STATE OF WEST BENGAL , BEING REP. BY ARINDOM CHOWDHURY, SR. MANAGER (ADMIN.)

VERSUS

THE STATE OF ASSAM AND 5 ORS
REP. BY THE COMMISSIONER AND SECRETARY TO THE GOVT. OF ASSAM, FOREST AND ENVIRONMENT DEPTT., DISPUR, GHY-6

2:THE PRINCIPAL CHIEF CONSERVATOR OF FOREST AND HEAD FOREST FORCE
ARANYA BHAWAN
PANJABARI

GUWAHATI-37
ASSAM

3:THE DIRECTOR GENERAL OF POLICE
ASSAM

ASSAM POLICE HEADQUARTER
ULUBARI
GUWAHATI-07

4:THE DEPUTY CONSERVATOR OF FOREST

BUREAU OF INVESTIGATION
(E.O)
ASSAM.
SRIMANTAPUR
GUWAHATI-32

ASSAM

5:NATIONAL HIGHWAYS AND INFRASTRUCTURE DEVELOPMENT CORPORATION LIMITED
3RD FLOOR
PTI BUILDING
4 PARLIAMENT STREET
NEW DELHI- 110001

REP BY ITS MANAGING DIRECTOR

6:THE DEPUTY GENERAL MANAGER (P)

NATIONAL HIGHWAYS AND INFRASTRUCTURE DEVELOPMENT CORPORATION LIMITED
PMU
TEZPUR
SARAF TOWER
1ST FLOOR
OPP. DON BOSCO SCHOOL
MAZGAON
TEZPUR
784001

DIST- SONITPUR
ASSA

Advocate for the Petitioner : DR. A SARAF, MS. S. TODI,MR M SAHEWALLA,MS G DUGAR,MR G N SAHEWALLA,B SARMA,MR. G DUTTATRAY,MR P K BORA,MR S J SAIKIA,MR. N N DUTTA,MR P BARUAH,MR. S CHETIA

Advocate for the Respondent : GA, ASSAM,

Linked Case : WP(C)/1765/2023

SIMPLEX INFRASTRUCTURES LTD.
HAVING ITS REGISTERED OFFICE AT SIMPLEX HOUSE 27 SHAKESPEARE SARANI KOLKATA PIN 700017 STATE WEST BENGAL AND REP.HEREIN BY MR. ARINDOM CHOWDHURY SENIOR MANAGER ADMINISTRATION

VERSUS

THE STATE OF ASSAM AND 5 ORS.
REP. BY THE COMMISSIONER AND SECRETARY TO THE GOVT. OF ASSAM FOREST AND ENVIRONMENT DEPTT. DISPUR GUWAHATI 6

2:THE PRINCIPAL CHIEF CONSERVATOR OF FOREST AND HEAD OF FOREST FORCE
ARANYA BHAWAN PANJABARI GUWAHATI 781037 ASSAM

3:THE DEPUTY CONSERVATOR OF FOREST BUREAU OF INVESTIGATION (E.O) ASSAM
SRIMANTAPUR GUWAHATI 32 ASSAM

4:THE DIVISIONAL FOREST OFFICER SONITOUR EAST DIVISION
BISWANATH CHARIALI ASSAM

5:THE NATIONAL HIGHWAYS AND INFRASTRUCTURE DEVELOPMENT CORPORATION LTD.
3RD FLOOR PTI BUILDING 4 PARLIAMENT STREET NEW DELHI 110001 AND REP. BY HEREIN BY ITS MANAGING DIRECTOR

6:THE DEPUTY GENERAL MANAGER (PROJECTS)
NATIONAL HIGHWAY AND INFRASTRUCTURE DEVELOPMENT CORPORATION LT.D. PMU TEZPUR SARAF TOWER 1ST FLOOR OPPOSITE DON BOSCO SCHOOL MAZGAON TEZPUR 784001 DIST. SONITPUR ASSAM

Advocate for : DR. ASHOK SARAF
Advocate for : SC
FOREST appearing for THE STATE OF ASSAM AND 5 ORS.

:::BEFORE:::

HON'BLE MR. JUSTICE KARDAK ETE

Date on which judgment is reserved : 09.06.2026

Date of pronouncement of judgment : 01.07.2026

Whether the pronouncement is of the Operative part of the judgment : N/A

Whether the full judgment has been
Pronounced : Yes

Judgment & Order (CAV)

Heard Mr. G. N. Sahewalla, learned Senior Counsel assisted by Mr. H. K. Sarma, learned counsel for the petitioners. Also heard Mr. D. Gogoi, learned Standing Counsel, Forest Department; Mr. C. Baruah, learned Standing Counsel, NHIDCL and Mr. U. Das, learned Senior Government Advocate for the State respondents.

2. As both writ petitions involve identical questions of fact and law arising out of the same EPC contract awarded for execution of the work "Four Lanning of Dholabari to Jamuguri Section of NH-52", same were heard together and disposed of by this common judgment and order.

3. By filing the present writ petitions, the petitioner has assailed a series of demand and recovery communications whereby monetary liability towards forest royalty, price of minor minerals, GST, income tax and penalty in respect of earth, sand, boulders and other construction materials used in execution of the EPC contract awarded on 12.04.2017, initially raised vide Demand Notice dated 15.07.2022 to the extent of Rs. 12,97,46,245/- (Rupees twelve crore ninety-seven lakh forty-six thousand two hundred forty-five), which was thereafter revised vide communication dated 28.07.2022 to Rs. 3,00,24,540/- (Rupees three crore twenty-four thousand five hundred forty) and subsequently enhanced vide communication dated 31.12.2022 to Rs. 15,58,76,034/- (Rupees

fifteen crore fifty-eight lakh seventy-six thousand thirty-four), and further escalated and raised vide communication dated 16.03.2023 to Rs. 40,04,04,926/- (Rupees forty crore four lakh four thousand nine hundred twenty-six), which contract was subsequently foreclosed by mutual agreement vide Supplementary Foreclosure Agreement dated 29.10.2021 with effect from 01.02.2021.

4. The petitioner is a company registered under the Companies Act, 2013 having its registered office at "Simplex House", 27, Shakespeare Sarani, Kolkata–700017 in the State of West Bengal, engaged in large-scale infrastructure development works across the country, including execution of national highway projects and is a reputed engineering and construction company having experience in execution of Engineering, Procurement and Construction (EPC) contracts of similar nature.

5. The petitioner was awarded the EPC contract on 12.04.2017 for execution of the work "Four Laning of Dolabari to Jamuguri Section from Km 17.300 of NH-37A to Km 182.000 of NH-52 in the State of Assam under SARDP-NE Phase-A on EPC Mode". Accordingly, a formal Contract Agreement was executed on 12.04.2017 between the petitioner and the National Highways and Infrastructure Development Corporation Limited (NHIDCL), containing detailed terms and conditions governing execution of the said highway project and in terms thereof the petitioner commenced execution of the work.

6. It is the case of the petitioner that during execution of the aforesaid EPC contract, substantial quantities of earth materials including earth, sand, boulders and coarse aggregates were required for execution of embankment, sub-grade filling, guide bunds and allied highway construction works, which constitute

"minor minerals" under the Mines and Minerals (Development and Regulation) Act, 1957 (hereinafter referred to as the Act of 1957) as well as the Assam Minor Mineral Concession Rules, 2013 (hereinafter referred to as the Rules of 2013) and were procured strictly in accordance with law from permissible sources including authorised local sources within the State of Assam, neighbouring State of Arunachal Pradesh, river beds, as well as by re-utilisation of excavated earth available within the project site, depending upon availability and technical requirements of the work.

7. It is stated that insofar as procurement within the State of Assam is concerned, the petitioner had duly applied for and obtained permits under Rule 5 of the Rules of 2013 upon advance deposit of royalty and pursuant thereto valid permits were issued by the competent authority from time to time under which such materials were lawfully procured and utilised in execution of the project.

8. It is contended that as the locally available quantities were insufficient for the large-scale highway project, the petitioner procured boulders and stone aggregates from the neighbouring State of Arunachal Pradesh after payment of royalty to the Government of Arunachal Pradesh and upon issuance of valid transit passes. The petitioner also procured earth and sand from the river bed of river Jia Bharali after obtaining necessary No Objection Certificate from the Executive Engineer, Tezpur Water Resources Division, Government of Assam for de-siltation purposes, without payment of royalty to the Water Resources Department as none was applicable, in consonance with the policy of the Government of India, Ministry of Road Transport and Highways vide communication dated 31.08.2017 permitting utilisation of excavated materials

from water bodies for highway works. Additionally, excavated earth available within the project alignment was reutilised for cut and fill operations and embankment formation.

9. The petitioner contends that all procurement and utilisation of minor minerals were undertaken strictly in compliance with the provisions of the Act of 1957, the Rules of 2013 and all other applicable statutory provisions, and wherever royalty was payable the same was duly deposited in advance with necessary permits and transit passes issued by the competent authorities and there was no violation of any statutory requirement.

10. The petitioner was served with impugned Demand Notice dated 15.07.2022 issued by the Deputy Conservator of Forest, Bureau of Investigation (Economic Offence), Assam, whereby an amount of Rs. 12,97,46,245/- was sought to be recovered towards alleged evasion of forest royalty, GST and income tax in respect of earth materials utilised in the project, on the basis of an enquiry conducted by the said Bureau, wherein records were called for from the office of the Deputy General Manager (Projects), PMU, Tezpur under NHIDCL, and upon examination of royalty receipts and transit passes submitted by the petitioner, conclusions were drawn alleging evasion of statutory dues. The said demand further directed deposit of the amount into the Government Treasury by 01.08.2022 and also requested NHIDCL to withhold payments due to the petitioner.

11. The petitioner contends that the aforesaid demand was issued without any prior show cause notice or opportunity of hearing. Immediately thereafter, the petitioner submitted a detailed reply dated 20.07.2022 before the Deputy Conservator of Forest, Bureau of Investigation (Economic Offence), Assam,

explaining source-wise procurement and utilisation of minor minerals and enclosing supporting records. It was specifically clarified that 4,32,895 CuM of earth materials were procured from local authorised sources upon payment of royalty; 1,00,000 CuM were extracted from river Jia Bharali for de-siltation and utilised in terms of MoRTH Circular dated 31.08.2017; approximately 10,000 CuM were re-used excavated earth within the project site; and 1,13,425.70 CuM of boulders and core aggregates were procured from the State of Arunachal Pradesh upon payment of royalty and valid transit passes. The remaining quantities were accounted for as re-used excavation and accordingly any allegation of evasion of statutory dues was denied.

12. Since the Deputy Conservator of Forest, Bureau of Investigation (Economic Offence), Assam (BOI(E.O.)) vide Demand Notice dated 15.07.2022 had requested the Deputy General Manager (Projects), PMU, Tezpur under NHIDCL to withhold payments of the Petitioner till deposit of the alleged evaded amount of Rs. 12,97,46,245/- and receipt of confirmation, the petitioner addressed a communication dated 23.07.2022 to NHIDCL requesting release of its outstanding bills. In the said communication, the petitioner reiterated that the allegations of evasion of Forest Royalty were denied in its reply dated 20.07.2022 and that royalty for forest produce utilised had already been duly paid. It was further stated that there was no breach of statutory provisions, including EPCA, and that full compliance had been made. The Petitioner also submitted that no Forest Royalty dues were outstanding and requested NHIDCL not to withhold payments at the instance of BOI(E.O.). Thereafter, the Petitioner furnished details of royalty payments along with supporting documents on 25.07.2022 and resubmitted the same on 27.07.2022.

13. Thereafter, BOI(E.O.) issued Demand Notice dated 28.07.2022 re-assessing the alleged Forest Royalty liability at Rs. 3,00,24,540/- and directing deposit by 15.08.2022. The said notice was issued after examining records including royalty receipts and transit passes obtained from NHIDCL and alleged evasion of Forest Royalty, GST and Income Tax. It further directed NHIDCL to release payments to the Petitioner only after deposit of the said amount and receipt of confirmation and warned of action in case of non-compliance.

14. That apart, the Petitioner had duly explained its compliance to BOI(E.O.) and NHIDCL; however, BOI(E.O.) did not drop the proceedings and NHIDCL continued withholding the Petitioner's legitimate dues at the instance of BOI(E.O.). Being aggrieved, the Petitioner approached this Court by filing first present writ petition being W.P.(C) No. 5631/2022. On 02.09.2022, this Court issued notice and granted interim protection directing that no coercive action shall be taken against the Petitioner for recovery of the said amount and the interim order continues to operate.

15. The petitioner contends that while W.P.(C) No. 5631/2022 was pending, which was filed challenging the impugned demand of forest royalty raised by the respondent authorities against the performance of the petitioner's contractual obligations under the EPC contract awarded by the NHIDCL, the petitioner was shocked to receive a communication vide Letter dated 05.01.2023 issued by the Deputy General Manager (Projects), PMU, Tezpur under the NHIDCL, whereby a forwarding communication dated 31.12.2022 issued by the Divisional Forest Officer, Sonitpur East Division was enclosed and by the said communication an amount of Rs. 15,58,76,034/- has been determined as payable on account of forest royalty allegedly recoverable from the petitioner in respect of the work

executed under the said EPC contract, which had already been foreclosed on 20.08.2021 by way of Supplementary Foreclosure Agreement executed on 29.10.2021 between the parties.

16. In the communication dated 31.12.2022 issued by the Divisional Forest Officer, Sonitpur East Division, the alleged quantities of earth materials, stone aggregates and sand purportedly utilised by the petitioner were reassessed and substantially enhanced compared to the earlier determination vide communication dated 28.07.2022 issued by the Deputy Conservator of Forest, Bureau of Investigation (Economic Offence), Assam. In the earlier communication, the quantities were assessed at 7,51,448 CuM of Earth Material, 1,13,425.70 CuM of Stone Aggregate and 8,404.62 CuM of Sand, whereas in the subsequent communication the same were reassessed at 11,41,316 CuM, 1,20,701 CuM and 12,826 CuM respectively, thereby reflecting a substantial upward revision for the same project and period. The Divisional Forest Officer has also imposed penalty at the rate of 200% upon the assessed quantities in addition to royalty and other consequential additions, thereby enhancing the alleged liability in respect of the minor minerals used in execution of the EPC contract. Accordingly, the Divisional Forest Officer requested the Deputy General Manager (Projects), PMU, Tezpur under NHIDCL to deposit the said amount directly into the online portal of the Forest Department to avoid alleged loss of Government revenue and without delay.

17. After receiving the said communication from the Deputy General Manager (Projects), PMU, Tezpur under the NHIDCL, the petitioner vide letter dated 06.02.2023 to the said authority clarified that the petitioner had already paid the entire amount of forest royalty and had also produced all supporting

documents before the Deputy Conservator of Forest, Bureau of Investigation (Economic Offence), Assam in respect of procurement and utilisation of minor minerals in the construction activities under the NHIDCL. In this backdrop, it was further informed that the alleged demand of Rs. 15,58,76,034/- was based on an erroneous assessment, possibly arising due to lack of coordination between the field authorities and it was also brought to the notice of the said authority that the matter was already sub judice before this Court and, therefore, it would not be prudent to proceed further in the matter till judicial determination.

18. While the petitioner was anticipating resolution of the issue at the level of the authorities, it was further shocked to receive another impugned communication dated 16.03.2023 issued by the Divisional Forest Officer, Sonitpur East Division addressed to the Deputy General Manager (Projects), PMU, Tezpur under NHIDCL, whereby the earlier assessed quantities were revised and earth materials were reduced from 11,41,316 CuM to 7,68,421 CuM, noting payment of royalty for 3,72,895 CuM amounting to Rs. 1,11,86,852/- and for the remaining 7,68,421 CuM, royalty of Rs. 2,30,52,630/- was determined. In addition, Rs. 15,21,47,358/- was assessed as price of earth materials at Rs. 198/- per CuM, with 200% penalty on royalty. Similarly, for 1,20,701 CuM of stone aggregates, Rs. 2,41,40,200/- was determined as royalty, Rs. 6,90,40,972/- as price at Rs. 572/- per CuM and 200% penalty and for 12,826 CuM of sand, Rs. 17,95,640/- as royalty, Rs. 41,42,798/- as price at Rs. 321.44/- per CuM and 200% penalty, totalling Rs. 40,04,04,926.60 including price and penalty. The authority also directed deposit of the amount prior to release of petitioner's payments. It is stated that despite earlier acknowledgment of royalty payment for substantial quantities, the entire quantities were again subjected to

royalty, price and penalty without prior notice or hearing.

19. The Deputy General Manager (Projects), PMU, Tezpur under the NHIDCL, vide Letter dated 18.03.2023, informed the Divisional Forest Officer, Sonitpur East Division that after foreclosure of the contract on 20.08.2021 there was no live contract with the petitioner and further clarified that any dues arising out of procurement or extraction of minor minerals was a matter between the petitioner and the Forest Department, and the NHIDCL had no responsibility or liability in that regard, however it was also stated that payments of the petitioner were being withheld in view of the earlier proceedings and that final payment would be released only upon clearance of forest royalty dues, thereby continuing the withholding of contractual payments.

20. Being aggrieved by the communication dated 31.12.2022 determining a liability of Rs. 15,58,76,034/-, the subsequent communication dated 16.03.2023 raising a demand of Rs. 40,04,04,926.60/- issued by the Divisional Forest Officer, Sonitpur East Division and the consequential communication dated 18.03.2023 issued by the Deputy General Manager (Projects), PMU, Tezpur under the NHIDCL, the petitioner has instituted the present second writ petition, being W.P.(C) No. 1765/2023, seeking appropriate reliefs.

21. Mr. G. N. Sahewalla, learned Senior Counsel for the petitioner submits that the petitioner had been awarded the contract dated 12.04.2017 for construction of "Four Lanning of Dholabari to Jamuguri Section of NH-52" on EPC mode and in connection with execution of the said work, the petitioner had procured earth materials, coarse aggregates, boulders and sand after obtaining necessary permits and after payment of royalty wherever applicable. It is submitted that boulders and coarse aggregates were procured from the State of Arunachal

Pradesh after payment of royalty and obtaining necessary permits, while sand and earth materials were procured from the river bed of Jia Bharali after obtaining No Objection Certificate from the Water Resources Department.

22. Learned Senior Counsel submits that although the Deputy Conservator of Forest, BI(E.O.), Assam initially issued the demand notice dated 15.07.2022 demanding an amount of Rs.12,97,46,245/-, upon submission of detailed replies and supporting documents showing payment of royalty, the demand was revised by communication dated 28.07.2022 and reduced to Rs.3,00,24,540/-. The said communication became the subject matter of W.P.(C) No.5631/2022 and this Court, by order dated 02.09.2022, directed that no coercive action shall be taken against the petitioner for recovery of the royalty amount. Despite the aforesaid order, the Divisional Forest Officer, Sonitpur East Division, issued communication dated 31.12.2022 showing a demand of Rs.15,58,76,034/- which included penalty at the rate of 200% and subsequently, by communication dated 16.03.2023, further enhanced the demand to Rs.40,04,04,926/-. Mr. Sahewalla, learned Senior Counsel submits that the impugned demands are fundamentally misconceived in law as they proceed dehors the scheme of the Act of 1957 and the Rules of 2013.

23. Referring to Section 9 of the Act of 1957, learned Senior Counsel submits that the liability to pay royalty is statutorily fastened only upon the holder of a mining lease in respect of minerals removed or consumed from the leased area. It is submitted that the statutory scheme is confined to a lease-based mining regime and in the absence of any mining lease in favour of the petitioner, no liability in the nature of royalty, far less composite demands including price, GST, income tax and penalty, can be fastened in the manner sought to be done by

the respondents.

24. It is submitted that Rule 5 of the Rules of 2013 governs procurement of minor minerals by Government departments, agencies and contractors engaged in public projects. Under Rule 5(3), such contractors are required to obtain permits and pay royalty/dead rent/fees in advance "as notified", wherever applicable. It is submitted that the petitioner, strictly complied with the said statutory mandate by obtaining permits and making advance payment of royalty wherever required and therefore the entire foundation of alleged non-payment is factually and legally incorrect.

25. Learned Senior Counsel submits that the utilisation of approximately 11,41,316 CuM of earth material is fully explained and stands duly accounted for. Out of the said quantity, about 4,32,000 CuM was procured against valid permits upon payment of royalty; about 2,43,000 CuM was reused excavated earth from within the project site utilised for guide bund formation; and about 20,000 CuM was obtained from structure excavation within the alignment itself. It is submitted that such internally generated and reused earth cannot, in law, be subjected to royalty again.

26. It is submitted that approximately 4,39,000 CuM of earth was obtained from the river Jia Bharali pursuant to permission/NOC issued by the competent Water Resources authority for de-siltation. Such utilisation was in conformity with the Government of India Circular dated 31.08.2017 issued by the Ministry of Road Transport and Highways, which recognises use of excavated material from water bodies for highway projects. Learned Senior Counsel submits that such material, being dredged/de-silted and not commercially mined, does not attract royalty in the manner alleged. It is also submitted that substantial

quantities of stone aggregates and boulders were procured from the State of Arunachal Pradesh upon payment of royalty to that State and upon issuance of valid transit passes. Therefore, no further levy could be imposed by the respondents in Assam in respect of materials already subjected to royalty in the source State.

27. Learned Senior Counsel submits that the entire action of the respondents proceeds on an erroneous invocation of Rule 64 of the Rules of 2013, which is wholly inapplicable to the present case. It is submitted that Rule 64, is a penal provision which is attracted only in cases of "illegal or unauthorised mining". It contemplates seizure of minerals, impounding of tools, recovery of price of minerals and imposition of fine only upon a finding that mining activity was undertaken without authority.

28. It is contended that in the present case, no authority has recorded any finding of illegal or unauthorised mining. On the contrary, the entire case of the petitioner is that procurement was either under valid permits with payment of royalty, from another State after payment of royalty, from river de-siltation under Government permission, or from within-site excavation and reuse. In absence of the foundational jurisdictional fact of illegal mining, invocation of Rule 64 is *ex facie* without authority.

29. Learned Senior Counsel further submits that even otherwise, Rule 64 does not authorise automatic imposition of price of minerals, GST, income tax and penalty in a composite manner as has been done in the impugned communications. The provision contemplates "price of mineral + royalty + fine", but only upon lawful invocation after establishing illegal extraction. The inclusion of GST and income tax is wholly extraneous to the statutory scheme.

30. It is further submitted that the First Schedule to the Rules of 2013 clearly prescribes the applicable royalty rates, namely Rs.70/- per CuM for sand, while no royalty is prescribed for ordinary earth. Despite this, the impugned communications have proceeded to levy royalty on earth as well as adopt arbitrary rates far in excess of the statutory schedule, without any supporting notification or amendment.

31. Learned Senior Counsel submits that the liability has been subjected to repeated revisions in a manner which, according to him, lacks consistency and coherence. It is pointed out that the initial demand of Rs. 12,97,46,245/- raised on 15.07.2022 was subsequently reduced to Rs. 3,00,24,540/- on 28.07.2022, thereafter enhanced to Rs. 15,58,76,034/- on 31.12.2022 and ultimately escalated to Rs. 40,04,04,926/- on 16.03.2023, all stated to arise out of the same underlying factual matrix and material records. It is contended that such wide fluctuations in quantification, without any demonstrable uniform basis or clearly articulated rationale at each stage, disclose absence of a consistent methodology and indicate non-application of mind, thereby rendering the impugned determinations unsustainable in law.

32. It is further submitted that the impugned communications are vitiated by gross violation of principles of natural justice. No notice or opportunity of hearing was afforded to the petitioner prior to enhancement/re-determination of liability by the Divisional Forest Officer, Sonitpur East Division, despite serious civil consequences arising therefrom.

33. Learned Senior Counsel further submits that the communications dated 28.07.2022 issued by the BOI(E.O.) had already taken into account royalty payments and reduced the liability accordingly. Once such determination was

made and protected by interim order of this Court, it was not open to the respondents to reopen the very same factual matrix and reassess liability without fresh jurisdictional basis.

34. It is also submitted that reliance on forest notifications for fixation of royalty is wholly misplaced. The subject matter relates to minor minerals governed exclusively by the Act of 1957 and the Rules of 2013, and not forest produce. Therefore, any computation based on forest tariff notifications is *ex facie* irrelevant and legally unsustainable.

35. On the contractual aspect, learned Senior Counsel submits that neither the EPC Agreement dated 12.04.2017 nor the Supplementary Foreclosure Agreement dated 29.10.2021 contains any clause authorising NHIDCL to withhold or deduct contractual payments on account of alleged forest royalty disputes. On the contrary, the foreclosure agreement mandates release of all pending bills, withheld amounts and retention money, subject only to contractual adjustments arising under the agreement itself. It is therefore submitted that the impugned communications dated 15.07.2022, 28.07.2022, 31.12.2022 and 16.03.2023 are wholly without jurisdiction, contrary to Section 9 of the Act of 1957, ultra vires Rules 5 and 64 of the Rules of 2013, arbitrary in computation, violative of natural justice and liable to be set aside with consequential directions for release of the petitioner's withheld contractual dues.

36. In support of his submissions, learned Senior Counsel places reliance on the decision in **State of Assam vs. Muslim Ali,** reported in **(2013) 2 GLR 505**, to contend that in the absence of any specific contractual clause authorising deduction of royalty, the State authorities cannot unilaterally recover or adjust forest royalty from the bills or security deposits of a contractor, and that such

action cannot be based on presumption or surmises without statutory support or prior opportunity of hearing, as any such deduction may amount to impermissible double recovery. Reliance is also placed on **Dipayan Paul and Chanchal Paul JV vs. State of Assam,** reported in **2020 (4) GLR 284**, to submit that royalty cannot be imposed or deducted in a mechanical manner and must be supported by clear statutory authority and adherence to principles of natural justice.

37. Further reliance is placed on, **TATA Projects Ltd. vs. State of Maharashtra,** reported in **2018 (1) AIR Bom R 238**, wherein following the ratio laid down by the Hon'ble Supreme Court in **Promoters & Builders Association of Pune (supra)**, the Hon'ble Bombay High Court held that a blanket determination of liability merely because ordinary earth was dug up would not be justified and that, unless there is a clear finding that the excavated earth was used and/or utilized for any commercial purpose or that the earth so extracted was not used and utilized on the very same plot of land, there is no question of imposing any royalty. Learned Senior Counsel submits that the legal position is well settled that the levy of royalty would depend upon the use or purpose for which the excavated earth had been put.

38. It is therefore submitted that the ratio of the aforesaid decisions squarely applies to the present case, inasmuch as the impugned demands have been raised without contractual authority, without statutory basis under the Act of 1957 or the Rules of 2013 and in complete disregard of due process under law.

39. *Per contra*, Mr. D. Gogoi, learned Standing Counsel, Forest Department submits that the impugned communications having been issued strictly in accordance with the statutory framework governing extraction and utilisation of

minor minerals in the State of Assam and on the basis of a detailed, continuous and document-based enquiry conducted by the Bureau of Investigation (Economic Offences), Assam, followed by verification and reconciliation of records furnished by NHIDCL and the petitioner from time to time, cannot be termed as arbitrary or without jurisdiction.

40. Learned Standing Counsel submits that the entire proceedings were initiated vide letter dated 29.05.2019 issued by BOI(E.O.), Assam calling upon NHIDCL to furnish complete details of utilisation of minor minerals and payment of royalty in respect of the EPC contract in question and in response thereto NHIDCL furnished relevant records vide letter dated 19.06.2019. Thereafter the petitioner was repeatedly required to furnish supporting documents including royalty payment receipts, lifting permits, challans and source-wise details through communications dated 23.07.2019, 27.01.2020 and 01.04.2022, thereby clearly indicating that the exercise was not one-time but a continuing process of verification and cross-verification of data.

41. It is submitted that in addition to documentary verification, field inspections were also conducted on 05.11.2020 and 06.11.2020 by the competent authorities and discrepancies were noted between the quantities reflected in project execution records and the supporting royalty documentation produced by the petitioner. Thereafter, further verification was undertaken on the basis of records furnished by NHIDCL vide letter dated 10.06.2022 and only upon consolidation of all such material, the final assessment was undertaken, thereby ensuring that the impugned determination was not based on any isolated or unilateral material.

42. Learned Standing Counsel submits that upon detailed scrutiny of the

records so collected, it was found that the petitioner had utilised 7,51,448 CuM of earth, 1,13,425.70 CuM of coarse aggregate and 8,404.62 CuM of sand in execution of the EPC project, whereas valid documentary proof such as permits issued under the Rules of 2013, royalty challans and transit passes were furnished only in respect of limited quantities, namely 4,32,895 CuM of earth and 1,14,000 CuM of coarse aggregate and no valid statutory documents whatsoever were produced for the remaining substantial quantities, thereby giving rise to a clear inference of unauthorised extraction and consequent evasion of statutory dues payable to the State.

43. It is submitted that under Office Order No. 279 dated 02.04.2012 issued by the Principal Chief Conservator of Forest & Head of Forest Force, Assam, no minor mineral can be extracted without prior permit/lease from the competent authority under the Rules of 2013 and in absence of such authorisation, extraction and utilisation of minor minerals amounts to illegal mining. Reference is also made to Rule 63 of the Rules of 2013 defining illegal mining and providing consequences thereof, and Rule 64 of the said Rules empowering the authorities to recover the price of minerals, royalty and impose penalty in cases of unauthorised extraction. The State also places reliance on Rule 65 of the said Rules for consequential recovery and penal action.

44. It is submitted that Section 14 of the Act of 1957 clearly excludes the applicability of Sections 5 to 13 to minor minerals, thereby making the field exclusively governed by the Rules of 2013. It is contended that the petitioner's reliance on Section 9 of the Act of 1957 is wholly misconceived as royalty liability in respect of minor minerals is governed by the State Rules framed under the statutory scheme. It is further submitted that Rule 5 of the Rules of

2013 mandates that contractors executing Government projects must obtain permits and are liable to pay royalty/dead rent/fees in advance as notified and failure to obtain such permits for the entire quantity consumed renders the petitioner liable for recovery of royalty and other statutory dues.

45. Learned Standing Counsel, Forest Department submits that the petitioner admittedly did not possess any mining lease or valid permit for extraction of earth or sand from the river bed of Jia Bharali, and the so-called No Objection Certificate issued by the Executive Engineer, Tezpur Water Resources Division dated 08.11.2019 is without jurisdiction, as the Water Resources Department has no authority under the Act of 1957 or the Rules of 2013 to grant permission for extraction of minor minerals or forest produce. It is further submitted that the said NOC, even otherwise, is limited to sand and does not cover earth and in any case does not exempt the petitioner from payment of royalty under the statutory royalty regime.

46. It is submitted that reliance placed by the petitioner on the Government of India, Ministry of Road Transport and Highways communication dated 31.08.2017 is misplaced, as the said communication is only an administrative guideline permitting utilisation of excavated materials subject to compliance with applicable State laws and does not override statutory provisions relating to levy and collection of royalty under the Assam Forest Regulation, 1891 and the Rules of 2013.

47. Learned Standing Counsel, Forest Department submits that earth, sand, stone, gravel and similar materials are recognised as forest produce under the Assam Forest Regulation, 1891 read with relevant Government notifications including notification dated 01.09.2009 prescribing schedule of royalty rates.

Under the said notification, contractors executing Government works are required to obtain permits from the Forest Department upon payment of royalty and no extraction or utilisation can be undertaken without such compliance. It is submitted that the petitioner has violated the said statutory mandate and has suppressed material facts during enquiry.

48. Learned Standing Counsel, Forest Department submits that during the course of enquiry, the petitioner was repeatedly afforded opportunity to produce documents vide letters dated 23.07.2019, 27.01.2020 and 01.04.2022, and field verification was also conducted on 05.11.2020 and 06.11.2020. Despite such opportunities, the petitioner failed to furnish complete records initially and only partial documents were submitted on 21.11.2020. The final assessment was thereafter undertaken on the basis of verified records furnished by NHIDCL vide letter dated 10.06.2022.

49. It is submitted that upon scrutiny of the said records, the impugned demand dated 15.07.2022 for Rs. 12,97,46,245/- was raised under Rules 63, 64(i), 64(ii), 65(i) and 65(ii) of the Rules of 2013. Upon subsequent reconciliation and verification of documents furnished by the petitioner, the liability was revised vide communication dated 28.07.2022 to Rs. 3,00,24,540/-, thereby demonstrating application of mind and fairness in assessment. Thereafter, independent reassessment by the Divisional Forest Officer, Sonitpur East Division resulted in enhancement vide communications dated 31.12.2022 and 16.03.2023 determining total liability of Rs. 40,04,04,926.60/- including royalty, price of minerals and penalty at the rate of 200%, all in accordance with Rule 64 read with Rule 65 of the Rules of 2013.

50. On the basis of the aforesaid facts and submissions, learned Standing

Counsel, Forest contends that the impugned action has been taken strictly in accordance with the provisions of the Act of 1957 and the Rules of 2013 after affording adequate opportunity to the petitioner and upon due verification of records and field inspections. It is submitted that the issues sought to be raised involve disputed questions of fact relating to source, quantity and utilisation of minor minerals, which do not warrant interference. Accordingly, it is prayed that both the writ petitions, being devoid of merit, are liable to be dismissed.

51. Mr. C. Baruah, learned Standing Counsel for NHIDCL, submits that under the EPC Contract Agreement dated 12.04.2017, the obligation to obtain applicable permits, procure minor minerals and bear royalty and other statutory dues rests exclusively upon the petitioner-contractor. It is further submitted that NHIDCL is contractually indemnified in this regard and, therefore, no liability can be fastened upon it in respect of the alleged dues.

52. It is submitted that under Article 3 Clause 3.1.7 of the EPC Contract Agreement, it is the obligation of the Contractor to make necessary applications to the relevant Government instrumentalities for obtaining Applicable Permits and to obtain and keep in force such permits in conformity with Applicable Laws. Schedule–F of the Agreement specifically provides that permission of the State Government for extraction of boulders from quarry and permission of Village Panchayats and State Government for borrow earth are to be obtained by the Contractor. Hence, it is evidently clear that obtaining permits and deposit of royalty of the forest produce being used in the road construction activity is the obligation of the EPC Contractor executing the project.

53. It is submitted that Article 25 Clause 25.2.1 of the EPC Contract Agreement provides that the Contractor shall fully indemnify, hold harmless and defend the

Authority and the Authority Indemnified Persons from and against any loss and all loss and/or damages arising out of failure of the Contractor to comply with Applicable Laws and Applicable Permits. Therefore, NHIDCL is indemnified in this regard, and no cause of action arises against NHIDCL.

54. It is submitted that the procurement of raw materials and payment of taxes as per the laid down procedures of Government is the obligation of the Contractor. In this regard, NHIDCL had vide letter dated 23.04.2022 sought details from the Authority's Engineer with a copy to the petitioner, and the requisite details received vide letter dated 07.05.2022 were forwarded to the Deputy Conservator of Forest, Bureau of Investigation (Economic Offences), Assam, thereby reflecting that NHIDCL has only acted in a coordinating capacity on the basis of records received from the implementing agency.

55. It is further submitted that NHIDCL vide letter dated 26.07.2022 requested the petitioner to submit the documents directly to the Deputy Conservator of Forest, BOI(EO), Assam, who is the competent authority in this regard, and the same was complied with by the petitioner. It is therefore submitted that NHIDCL has not undertaken any adjudication with regard to forest royalty and has merely facilitated transmission of records.

56. It is stated that the project in question was foreclosed on 20.08.2021, and thereafter there is no live contract between the petitioner and NHIDCL. Even otherwise, as per Article 19 Clause 19.1.2 of the EPC Contract Agreement, the Contract Price includes all duties, taxes, royalty and fees that may be levied in accordance with law, and nothing in the Agreement relieves the Contractor from its responsibility to pay such statutory dues.

57. It is submitted that NHIDCL vide letters dated 04.07.2022 had requested the concerned Divisional Forest Officers for providing No Dues/Forest Royalty Clearance Certificate, which is still awaited. Meanwhile, NHIDCL received communication dated 15.07.2022 from the Deputy Conservator of Forest, Bureau of Investigation (Economic Offences), Assam alleging evasion of Forest Royalty amounting to Rs. 12,97,46,245/- and requesting release of payment only after deposit of the said amount.

58. Subsequently, vide communication dated 28.07.2022, the said demand was revised to Rs. 3,00,24,540/-, and NHIDCL, being a Government PSU and in order to safeguard interest of the Government, withheld the said amount from the petitioner's dues till finalisation of the issue. It is submitted that the said amount will be released to the EPC Contractor once it settles its dues as per law with the concerned Forest Department.

59. It is further submitted that thereafter the Divisional Forest Officer, Sonitpur East Division vide communication dated 31.12.2022 intimated a revised liability of Rs. 15,58,76,034/-, which was forwarded to the petitioner vide communication dated 05.01.2023 as per Article 25 of the EPC Contract Agreement. It is reiterated that as per Clause 25.1 and Clause 25.2.1 of the Agreement, the Contractor is bound to indemnify the Authority Indemnified Persons from any loss arising out of failure of the Contractor to comply with Applicable Laws and Applicable Permits. Therefore, it is submitted that NHIDCL has no responsibility or liability in this regard, and the procurement and payment of royalty relating to utilisation of minor minerals is solely the obligation of the Contractor. NHIDCL has acted strictly in terms of the EPC Contract Agreement and in order to safeguard Government revenue, and the

withholding of Rs. 3,00,24,540/- is only a protective measure pending final settlement of dues with the Forest Department in accordance with law.

60. I have considered the submissions advanced by the learned counsel for the parties and have also perused the materials available on record.

61. The present writ petitions arise out of an EPC contract dated 12.04.2017 awarded to the petitioner for execution of the work "Four Lanning of Dholabari to Jamuguri Section of NH-52". The dispute relates to a series of demand and recovery communications whereby liability has been assessed towards alleged non-payment of royalty and consequential statutory dues in respect of minor minerals, namely earth, sand and coarse aggregates used in execution of the project. The demand initially assessed at Rs. 12,97,46,245/-, was subsequently revised and enhanced from time to time, ultimately culminating in a demand of Rs. 40,04,04,926.60/-.

62. The petitioner's case, in substance, is that there has been no illegal or unauthorised extraction of minor minerals. It is stated that all materials used in execution of the project were procured either under valid permits upon payment of royalty, or sourced from other States upon payment of applicable royalty, or obtained through river de-siltation pursuant to permission/NOC of competent authorities, or re-used excavated earth from within the project site. It is therefore contended that the entire foundation of the impugned demand rests on an erroneous factual premise and is dehors the statutory scheme.

63. The stand of the respondents, on the other hand, is that upon detailed enquiry conducted by the Bureau of Investigation (Economic Offences), Assam, followed by verification of records furnished by NHIDCL and the petitioner and

field inspections, it was found that valid permits, challans and royalty receipts were available only in respect of part quantities of minor minerals, whereas substantial quantities remained unsupported by any valid statutory documentation. On that basis, it is asserted that the remaining quantities constitute unauthorised extraction, attracting liability under the Rules of 2013.

64. In view of the rival submissions, the principal question which arises for consideration is whether the impugned demands and communications are sustainable in law under the Act of 1957 read with the Rules of 2013 and whether the action of the respondents satisfies the requirements of fairness, non-arbitrariness and due process so as to warrant interference.

65. In order to appreciate the rival submissions, it would be apposite to refer to the statutory framework governing the field. Section 14 of the Act of 1957 excludes the application of Sections 5 to 13 thereof in respect of minor minerals and Section 15 empowers the State Government to frame rules regulating the grant of quarry leases, mining leases and other mineral concessions in respect of minor minerals and matters connected therewith. Section 15(3) of the said Act further provides that the holder of a mining lease or any other mineral concession granted under the rules framed under Section 15(1) shall pay royalty or dead rent, whichever is higher, in respect of minor minerals removed or consumed by him or by his agent, manager, employee, contractor or sub-lessee, at the rate prescribed under the rules framed by the State Government.

66. The relevant provisions of the Rules of 2013 are extracted hereinbelow:

> "*5. Quarrying of minor minerals by Government Departments/ Agencies/ Contractors engaged by Government Departments or Agencies*
>
> *(1) An application for the grant of mining permit for quarrying of any minor mineral*

by the notified Departments of State or Central Government or any of their agencies for any work/project, shall be made by an officer authorised by the concerned Department to the competent authority.

(2) The contractors engaged for the works/projects of the Government Departments/Agencies shall be granted mining permit for the required quantity as specified in the detailed project report for execution of the works/projects on making an application under sub-rule (1) above.

(3) The Department or the agency or the contractor granted a permit under sub-rule (1) above, shall be liable to pay royalty/ dead rent/ fee etc. in advance as notified by the Government and shall abide by the terms and conditions of such grant and other laws as applicable to the lessee or any other concession holder(s) unless specifically relaxed."

"*63. Illegal or unauthorised Mining-*

Any person undertaking any mining operations without a valid mineral concession granted under the Act and the rules framed thereunder in any area shall be deemed to be indulging in illegal or unauthorised mining and shall be dealt in accordance with the provisions contained in this chapter."

"*64. Consequence of illegal or unauthorised mining:-*

(i). For a first time violation, the said mineral shall be liable to be seized along with the impounding of all such tools, equipment, vehicles or any other things used for such unauthorised operation, which may be released only upon realization of the payment of price of the mineral and the applicable royalty for the mineral extracted and, in addition, a fine which shall not be less than Ten Thousand rupees;

(ii). For a second time violation, the said mineral shall be liable to be seized along with the impounding of all such tools, equipment, vehicles or any other things used for such unauthorised operation for a minimum period of seven days, which may be released only upon realisation of the payment of price of the mineral and the applicable royalty for the mineral extracted and, in addition, a fine which shall not be less than fifteen thousand rupees;

(iii) Whenever a person is found to be indulging in such offences for the third time or more, the officer concerned shall register an FIR and handover all such tools, equipment, vehicles or any other things used for such unauthorised operation to the Police. Any such offence shall entail (a) confiscation of all such tools, equipment, vehicles or any other thing used for such unauthorised operation for a period of

minimum thirty days or more and (b) pecuniary penalty and punishment for the offence as provided under Section 21 of the Mines and Minerals (Development and Regulation) Act, 1957."

"*65. Offences by companies.*

(1) If the person committing an offence under these rules is a company registered under the Companies Act, every person, who at the time when the offence was committed, was in-charge and was responsible to the company for the conduct of the business of the company, shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly:

Provided that nothing contained in this sub-rule shall render any such person liable to any punishment if he proves that the offence was committed without his knowledge or that he exercised all due diligence to prevent the commission ofsuch offence.

(2) Where an offence under these rules has been committed with the consent or connivance of any director, manager, secretary or other authorised representative of the company, such director, manager, secretary other authorised representative shall be deemed to be guilty of that offence and shall be liable to be proceeded against and punished accordingly."

"*68. Appeals.-(1) Unless otherwise provided, an appeal against an order passed by any Subordinate Officer shall lie with the Director/Principal Chief Conservator of Forests and Head of Forest Force, Assam as the case may be.*

(2) An appeal against the order passed by the Director/Principal Chief Conservator of Forests and Head of Forest Force, Assam shall lie before the Government in the Power (E), Mines and Minerals Department in respect of minerals under Schedule 'X' and the Environment and Forest Department in respect of minerals under Schedule 'Y'.

(3) No order under these rules shall be passed by the competent authority against any person unless he has been issued a show cause and given a reasonable opportunity to make a representation."

"*72. Recovery of Government dues as arrears of land revenue.—Any rent, royalty, fee, contract money or other sum due to the Government or penalty imposed under these rules or under the terms and conditions of the mining lease or contract or permit and remaining unpaid, shall constitute a first charge on the assets of a mineral concession*

holder or the surety furnished under these rules and shall be recoverable as arrears of Land Revenue."

67. A combined reading of Section 15 of the Act of 1957 and the Rules of 2013 leaves no manner of doubt that the State Government is empowered to regulate extraction and utilisation of minor minerals and to prescribe the conditions subject to which such activities may be undertaken. Rule 5 of the Rules of 2013 specifically governs procurement of minor minerals for Government projects and contemplates grant of mining permits to contractors for the quantities specified in the Detailed Project Report, coupled with payment of royalty and other statutory dues.

68. Sub-rule (3) of Rule 5 of the Assam Minor Mineral Concession Rules, 2013 was substituted by Rule 2 of the Assam Minor Mineral Concession (Amendment) Rules, 2021, vide Notification No. PEM.130/2021/40 dated 07.10.2021, published in the Assam Gazette (Extraordinary) on 11.10.2021, with effect from 11.10.2021.

69. Rules 63 and 64, on the other hand, deal with cases of illegal or unauthorised mining. While Rule 63 defines illegal or unauthorised mining as mining operations undertaken without a valid mineral concession granted under the Act and the Rules framed thereunder, Rule 64 prescribes the consequences flowing from such unauthorised extraction, including recovery of the price of minerals, applicable royalty and imposition of penalties. Thus, the statutory scheme itself draws a distinction between extraction undertaken pursuant to valid permits and extraction carried out without any lawful authority. Consequently, the existence or otherwise of valid permits and statutory authorisations assumes significance for determining whether the extraction in question falls within the ambit of Rule 63 and consequently attracts the

consequences contemplated under Rule 64.

70. In the present case, the entire action of the respondent authorities is founded upon an extensive and continuous process of enquiry undertaken by the Bureau of Investigation (Economic Offences), Assam and the Forest Department, involving collection of records from NHIDCL, repeated requisitions issued to the petitioner, and verification of source-wise utilisation of minor minerals. The record discloses that the petitioner was repeatedly called upon to furnish supporting documents vide communications dated 23.07.2019, 27.01.2020 and 01.04.2022, thereby ensuring that adequate opportunity was afforded to substantiate its claim regarding lawful procurement.

71. The materials on records indicate that the petitioner did participate in the said exercise and submitted documents, including royalty receipts, permits and transit passes, on different occasions except to contend that requisite permits were obtained on payment of royalty. Field inspections were also conducted on 05.11.2020 and 06.11.2020 for physical verification of execution and utilisation of materials at site. Therefore, it cannot be said that the impugned determinations were made without notice or in breach of natural justice. The process adopted by the authorities was in fact phased and continuous, involving verification, re-verification and reconciliation of competing data sets.

72. It is also evident that the initial assessment vide communication dated 15.07.2022, followed by revision dated 28.07.2022, demonstrates that the authorities considered the petitioner's objections and documents and modified the computation accordingly. Thereafter, upon further verification of records furnished by NHIDCL and reassessment by the Divisional Forest Officer, Sonitpur East Division, the liability was again recalculated and enhanced under

subsequent communications dated 31.12.2022 and 16.03.2023. The mere fact that the quantified liability underwent revision at different stages, by itself, does not render the entire exercise arbitrary, particularly when such revisions are stated to be based on additional verification and reconciliation of records.

73. The contention of the petitioner that all procurement was duly covered by valid permits or otherwise lawfully sourced, essentially raises disputed questions of fact relating to source-wise utilisation and accounting of large quantities of earth, sand and aggregates in a major infrastructure project. On the other hand, the respondents, on the basis of enquiry, have recorded a finding that valid documentation exists only in respect of part quantities, while the remaining quantities are unsupported by statutory permits and therefore fall within the ambit of "unauthorised extraction" under Rule 63.

74. Such competing factual assertions would necessarily require examination of voluminous records, source-wise reconciliation of quantities, scrutiny of permits, transit passes and royalty receipts and technical verification of project execution data. This Court, in exercise of jurisdiction under Article 226 of the Constitution of India, is concerned with the decision-making process and not with re-appreciation of disputed questions of fact or substitution of its own conclusions for those arrived at by the competent authorities upon appreciation of the materials collected during enquiry. The exercise undertaken by the respondent authorities, being founded upon materials collected during a prolonged process of verification and inspection, in my considered view cannot be said to be *ex facie* without jurisdiction.

75. The invocation of Rule 64 of the Rules of 2013 also cannot be said to be *ex facie* without jurisdiction as the said provision is attracted once extraction is

found to be without valid mineral concession. In the present case, the respondents have specifically recorded such a conclusion in respect of uncovered quantities, based on their assessment of the materials collected during enquiry. Whether such conclusion is ultimately correct is a matter of factual adjudication, but the jurisdictional foundation for initiating action under Rule 64 cannot be faulted at this stage.

76. Insofar as the contractual framework is concerned, the EPC Agreement dated 12.04.2017, read with the Supplementary Foreclosure Agreement, clearly casts the obligation upon the contractor to obtain all applicable permits, comply with statutory requirements and bear all taxes, royalties and statutory dues arising out of execution of the project. The indemnity clause further protects NHIDCL from any liability arising out of non-compliance by the contractor. In such circumstances, the act of NHIDCL in withholding payments pursuant to communications from the Forest authorities cannot be said to be arbitrary or dehors the contract, as it is only acting in a protective capacity pending determination of statutory dues.

77. Now coming to the case laws cited by the petitioner, the reliance placed on **Md. Muslim Ali (supra)** and **Dipayan Paul (supra)**, is misplaced, as those decisions were rendered in a context where the State had effected recovery of royalty without a clear statutory determination and without proper contractual authority or prior adjudication. The Court therein interfered primarily on the ground that unilateral deductions from bills, based on presumptions and without due process, were impermissible. In the present case, however, the impugned action is founded on a structured statutory exercise under the Rules of 2013, involving notice, verification, inspection, and assessment under Rules 63 and 64.

78. Similarly, in the case of **Promoters & Builders Association of Pune (supra),** while the Hon'ble Supreme Court held that a blanket determination of liability merely because ordinary earth was dug up would not be justified and that the liability to royalty would depend upon the use or purpose for which the excavated earth had been put, it was also emphasized that what is required is a precise determination of the end-use of the excavated earth. Likewise, in **TATA Projects Ltd. (supra)**, following the aforesaid ratio, the Hon'ble Bombay High Court observed that unless there is a clear finding that the excavated earth was used and/or utilized for any commercial purpose or that the earth so extracted was not used and utilized on the very same plot of land, there is no question of imposing any royalty.

79. Thus, all the decisions relied upon by the petitioner are distinguishable, as they were rendered in contexts where recovery was sought to be effected without a prior determinative exercise under the governing statutory framework or without a conclusive finding based on verification and adjudication, whereas in the present case the impugned action is founded on a detailed statutory exercise involving notice, verification, inspection, and assessment under the applicable Rules.

80. In view of the what has been discussed hereinabove and in view of the statutory scheme, the nature of enquiry undertaken and the opportunities afforded to the petitioner at various stages, this Court is of the considered opinion that the impugned communications do not suffer from any illegality, arbitrariness or want of jurisdiction as would justify interference in exercise of writ jurisdiction under Article 226 of the Constitution of India.

81. Accordingly, both the writ petitions are dismissed.

82. However, it is clarified that the dismissal of these writ petitions shall not preclude the petitioner from pursuing appropriate remedies available in law before the competent forum for adjudication of disputed factual issues or for challenging the quantification, if so advised.

83. There shall be no order as to costs.

JUDGE

Comparing Assistant