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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 785 OF 2008

Promoters and Builders Association
of Pune, District Pune, A society/ Trust
registered under the provisions of Societies
Registration Act, 1860 and Bombay Public
Trust Act, 1950, having its office at 501 &
502, Mantri Terrace Park, Nr. Sancheti
Hospital, Shivajinagar, Pune-5.
Pune, through its authorized Representatives
Shri. Nitin Nyati. ... Petitioners

Versus

1 The State of Maharashtra, through
its Principal Secretary to the Ministry
of Revenue Mantralaya, Mumbai-400 032.

2 The Divisional Commissioner, Pune
Division, Pune, having its office at Pune.

3 The Collector, Pune.

4 Sub-Divisional Officer, Haveli, Dis. Pune.

5 Tahsildar, Haveli, Dist. Pune.

6 Tahsildar, Mulshi, Dist. Pune.

7 Tahsildar, Pune City, Dist. Pune. ... Respondents
(copies for all Respondents to be served
AGP, Writ cell, High Court, A.S. Bombay.

WITH
WRIT PETITION NO. 1408 OF 2008

1 Kumudini Chandrakant Pethkar,
age 42, Ocucp. Agriculturist and
Business, Residing at 110/1/A,
Balwantpuram, Shivthirth Nagar,
Pune-38.

2 Pethkar Projects,
A partnership firm, registered under the
Provisions of the Indian Partnership Act,
having registered office at Plot No.B-21,
Madhavbaug Housing Society,
Shiv Tirtha Nagar, Kothrud, Pune-38. ... Petitioners.

Versus

1 The State of Maharashtra
through the Secretary, Revenue and Forest
Department, Mantralaya, Mumbai.

2 The Collector at Pune,
having office at Near Pune Railway Station
Pune.

3 The Additional Collector at Pune
Having office at Collector Office,
Near Pune Railway Station, Pune. ... Respondents

WITH
WRIT PETITION NO. 1912 OF 2008

M/s. Lake Town Developers, a Partnership firm
duly registered under Indian Partnership Act, 1932,

having its office at 663, Bibwewadi, Pune-411 046,
through its Partner namely Mr.Malav J. Shah. ... Petitioner

Versus

1 The State of Maharashtra, through its
Principal Secretary to the Ministry of
Revenue Mantralaya, Mumbai-400 032.

2 The Divisional Commissioner, Pune
Division, Pune, haivng its office at Pune.

3 The Collector, Pune, having office at
Collector Compound, Pune.

4 Sub-Divisional Officer, Haveli Dist. Pune
having office at Pune.

5 Tahsildar, Haveli, Dist. Pune
having office at Shukrawar Peth, Pune. ... Respondents
(Copies for all Respondents to be served
AGP, Writ cell, High Court, A.S., Bombay)

AND

WRIT PETITION NO. 970 OF 2010

1 Deepak Vallabhji Dedhia,
Age 50 years, Occupation: Business.

2 Vallabhji Devji Dedhia,
Age 73 years, Occupation: Business.

3 Jitendra Vallabhji Dedhia,
Age 47 years, Occupation: Business,
All Nos.1 to 3, Residing at 4, Kaushik Niwas,
L.N. Road, Matunga, Mumbai 400019.

4 Shri Suraj Parmar,
Age: 39 years, Occupation: Business,
having address at, 201, Arihant Building,
Agyari Lane, Tembhi Naka,
Thane (west) – 400601. ... Petitioners

Versus

1 The State of Maharashtra
Through the Revenue Department,
Mantralaya, Mumbai.

2 The District Collector, Thane,
Collector Office,
Thane (west).

3 Sub-Divisional Officer
Thane Division, Thane.

4 The Tahsildar,
Thane Division, Thane.

5 Circle Officer,
Thane Division, Thane. ... Respondents

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Mr. Girish Godbole for the Petitioners in WP No.785/08 & WP No.1912/08.
Mr. S.U.Kamdar with Ms. Gauri Godse for Petitioner in WP No.970/10.
Mr. Uday Warunjikar for the Petitioners in WP No.1408/08.
Mr. S.R.Nargolkar, GP for Respondents in all petitions.

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CORAM : A.M. KHANWILKAR and
R.M. SAVANT, JJ.
DATE : 08th October, 2010.

JUDGEMENT: ( PER A.M. KHANWILKAR, J )

1 By this common judgment we propose to dispose of the above four writ petitions, since the issues raised in all these petitions are overlapping.

2 Insofar as the Writ Petition No. 785 of 2008 is concerned, the same is filed by the Promoters and Builders Association of Pune. The said association is a duly registered association/ trust under the Societies Registration Act, 1860 and Bombay Public Trust Act, 1950. By this petition, the association is espousing the cause of its members, who have received notices from the Respondents demanding payment of royalty and penalty on the ground that they had carried out excavation for the purpose of laying foundation of the building without lawful authority. The said notice-cum-demand has been issued to the respective members purportedly in exercise of powers under Section 48 of the Maharashtra Land Revenue Code, 1966 (hereinafter referred to as “the Revenue Code” for the sake of brevity). According to the members of the Petitioner/ Association, they had commenced the work only after getting permissions from the appropriate authority for construction of the proposed building. The work of excavation of land for laying foundation was incidental to the activity of such construction. It is their case that

they have been carrying on the construction activity for building residential and commercial tenements after obtaining requisite permission for non agriculture use as contemplated under Section 44 of the Revenue Code and building/ development permission under Section 45 /69 of the Maharashtra Regional Town Planning Act, 1966 (hereinafter referred to as "MRTP Act" for the sake of brevity). Pursuant to such valid building permissions for the purposes of laying of foundation and/ or for the purposes of construction of basement, they are required to excavate the plinth area in their respective plots. The said work of excavation of plinth areas is done by using machinery/equipment without using any explosive or special mining machines. Further, after the plinth is excavated to the requisite depth, the foundation is laid by using Steel and RCC and thereafter excavated material is again filled in the said foundation. In case of any surplus excavated material, the same is either used within the same plot for the purpose of landscaping and/ or land filling activity or the same is transported outside. As a matter of fact, if the surplus excavated material is required to be transported, it results in substantial expenditure for transportation. The Petitioners have asserted that in any case, none of the members of the association sell the excavated material. On this basis, it is asserted by the Petitioners that the activity of excavation of plinth area for the purposes of laying foundation of the proposed building can never be construed as a mining activity nor can be construed as excavation of minor minerals. Thus, the demand made by the authorities regarding payment of royalty amount in

respect of the excavated material is without authority of law and unconstitutional. It is further asserted that since the demand of royalty amount itself is without authority, the question of levy of penalty does not arise. For, the penalty can be levied only if the person was liable to pay the amount of royalty and fails to do so. It is further stated that at any rate, demand of thrice the amount of royalty as penalty is unjustified. It is stated that some of the members of the Petitioner/ Association on receiving such illegal demand notices from the authorities, rushed to the Civil Court and have filed Civil Suits challenging the illegal demands. Whereas, some members have filed appeals under Section 247 of the Revenue Code to challenge the notices. The Petitioners/ Association however, assert that since the issue involves large number of persons and is of a general public importance, they have approached this Court directly under Article 226 of the Constitution of India for an authoritative decision on the point and also to avoid multiplicity of judicial proceedings and conflicting decisions on the issue. The relief claimed in this Petition is to issue Writ of Mandamus directing the Respondent Nos.5 to 7 to forthwith withdraw and/ or cancel the impugned Demand notices issued to the members of the Petitioners in purported exercise of powers conferred by Section 48 of the Revenue Code. The Petitioners further pray for Writ of Certiorari for quashing and setting aside the impugned demand notices. They have further prayed for declaration that Respondent Nos.5 to 7 do not have any authority and jurisdiction to levy and demand royalty and/ or penalty in respect of mineral used for the

purpose of landscaping or for laying foundation of building, especially when such work has been undertaken pursuant to a valid building permission issued by the Planning Authority under Section 45 of the MRTP Act and after obtaining permission of non-agriculture use under Section 44 of the Revenue Code.

3 The second petition being Writ Petition No.1408 of 2008, is filed by individuals. The Petitioner No.1 is the partner of Petitioner No.2, a partnership firm engaged in the business of developers. Petitioners decided to develop the land bearing Survey No.110/ 1/ A and Survey No. 110/ 1/ B at Kothrud, Pune. Accordingly, they applied to the appropriate authority for converting the user of the land from agriculture to non-agriculture status, which permission was granted under Section 44 of the Revenue Code. Thereafter, they applied to the Local Town Planning Authority for a building permission. The appropriate authority under the provisions of MRTP Act granted building permission and has allowed them to develop the plot and construct the building as per the approved plan. The Petitioners thereafter, started constructing the building inconformity with the approved plan. When the excavation work for laying foundation was going on, the District Mining Officer and Nayab Tahasildar, Haveli Taluka and District Pune visited the site. He took measurement and recorded that 17,441.29 brass murum was excavated by the Petitioners. It is stated in the notice that the excavation done by the Petitioners was without prior permission of the Competent Officer and

that the Petitioners were liable to pay royalty amount thereon to the Government. The Petitioners asked for time to file reply. After two weeks, the Petitioners once again received another communication from Respondent No.2 calling upon the Petitioners to file reply within seven days, failing which, it will be assumed that the Petitioners have no say. Thereafter, the Authority passed an order on 05th February, 2008 calling upon the Petitioners to pay amount of royalty as well as penalty. The Petitioners have therefore, directly rushed to this Court challenging the show-cause notice dated 09th January, 2008 and the order passed by the Respondent No.3 dated 05th February, 2008 and for declaration that provisions under Section 48 (7) of the Revenue Code are *ultra-vires* the Constitution of India. Be that as it may, the grounds of challenge even in this petition are identical.

4 The third petition being Writ Petition No.1912 of 2008 is filed by a partnership firm, which is stated to be a registered firm under the Indian Partnership Act, 1932. It is engaged in the business of development of lands in and around the District of Pune. The Petitioner is member of the Builders Association, who has filed the leading petition for and on behalf of its members. The relief in this petition is however, to quash and set aside the impugned demand notice dated 23rd November, 2007 issued to the Petitioner in purported exercise of powers conferred under Section 48 of the Revenue Code and to direct the Respondent No. 5 to forebear from acting upon the said demand notice. The Petitioner

has also asked for declaration that the Respondent No.5 does not have any authority and jurisdiction to levy and demand royalty and/ or penalty in relation to the material excavated from the lands developed by the Petitioner on the basis of a valid building permission issued by the Planning Authority under the provisions of MRTP Act and permission for non-agriculture use under Section 44 of the Revenue Code. This Petitioner has chosen to file separate petition on identical grounds and relief mainly because in the order passed by the Respondent No.5, it is incorrectly recorded that the advocate for the Petitioner has agreed to pay royalty on excavated minor minerals to the extent of 11,600 brass. Such statement recorded by the Respondent No.5, according to the Petitioner, is incorrect and a manifest error. Suffice it to observe that even this Petitioner has directly approached this Court for the stated reliefs in relation to the impugned demand notice. Insofar as the grievance regarding incorrect recording of factual position in the order in question, the Petitioner will have to pursue his remedy before the same Authority for correction of the record of the proceedings. This Court cannot sit in appeal over the said issue.

5 The fourth petition being Writ Petition No. 970 of 2010 is again filed by individuals claiming to be owners of property situated at Village Owale, Taluka and District Thane. Even these Petitioners intend to develop their land. For that, they sought necessary permissions from the appropriate authority. However, insofar as these Petitioners are

concerned, they had applied to the appropriate authority for permission under the provisions of Bombay Minor Minerals Extraction Rules, 1955 (hereinafter referred to as "the Rules of 1955" for the sake of brevity) before starting excavation. That permission was granted to the Petitioners. The Petitioners were required to pay a royalty amount. It is the case of the Petitioners that they paid the royalty amount in advance. In other words, these Petitioners assert that they had started excavation work after due permission therefor; and it was not a case of excavation carried out without authority of law. Nevertheless, the Petitioners received show-cause notice from the third respondent dated 27th May, 2009 alleging that the excavation done by them was without permission and calling upon the Petitioners to submit their reply. The Petitioners submitted their reply dated 03rd June, 2009 asserting that they have carried out excavation work only after taking due permissions. However, the construction carried on the property was by using construction material purchased by the contractor and that the excavated minerals were not used for the construction. The Petitioners also submitted necessary documents including permission in their favour. The report, prepared by the office of the third respondent after inspection of the site, records that the excavated soil was measured as 13116 brass. Referring to the said report, the Petitioners asserted that the excavation done by them was within the permissible limits of 16000 brass specified in the permissions obtained by the Petitioners. Even for that reason, no action could be taken against the Petitioners. However, the third respondent

passed an order on 14th July, 2009 in purported exercise of powers under Section 48(7) of the Revenue Code, directing the Petitioners to deposit an amount of Rs.1,78,14,908/- towards royalty amount and penalty. That is on the assumption that the permission in favour of the Petitioners were for the year 2007-08 and the work of excavation was done thereafter. The royalty amount was specified at Rs.12,11,600/- and the penalty imposed was to the tune of Rs.1,66,03,308/-, which was almost 14 times of the royalty amount. As a consequence of the said order, recovery proceedings have been initiated against the Petitioners. The Petitioners, therefore, filed appeal before the second Respondent. However, the said appeal, is stated to be still undecided. The grievance of the Petitioners is that neither the appeal nor the stay application was heard by the second respondent. In this backdrop, the Petitioners have rushed to this Court by way of present writ petition praying for quashing and setting aside the order passed by the third respondent dated 14th July, 2009 and also the notice issued by the fourth respondent dated 29th July, 2009 for recovery of the amount. The Petitioners have also asked for declaration that the Respondent Nos.2 to 5 do not have any authority and jurisdiction to levy and demand royalty and/ or penalty for the material excavated from the land used for construction of building either for the purposes of landscaping or for the purposes of laying of foundation of the building after obtaining valid construction permission from the Planning Authority under Section 45 of the MRTP Act and necessary permission for non-agricultural use under Section 44 of the Revenue Code. Most of the

grounds of challenge even in this petition are identical. In this petition, it is additionally urged that at any rate, the Respondents have no authority to impose penalty to the extent of 14 times of royalty amount.

6 The Respondents have resisted all these petitions. According to the Respondents, Section 48 of the Revenue Code leaves no manner of doubt that if the excavation is done without lawful permission, that would attract consequence provided therefor. The Respondents have countered the argument of the Petitioners to apply the test of dominant user. According to the Respondents, the fact that the excavation is done for laying foundation of the proposed building which is an incidental activity of construction of the building, will be of no avail. Inasmuch as, even the ordinary earth is considered to be minor mineral and which is reserved and vests in the State Government. Inasmuch as, the law provides that right to all minerals at whatever place found is reserved and vest in the State Government. No extraction, removal or for that matter excavation of land can be resorted to without prior permission of the Officer authorized to grant such permission under the provisions of the Act and Rules regulating the minerals. According to the Respondents, the governing words of Section 48 (7) of the Revenue Code are “without lawful authority”. That plainly means that the Petitioners ought to demonstrate that they have had lawful authority to extract, remove, collect, replace, pick-up or dispose of any minor minerals. In absence of which, the rigours of Section 48(7) would be

attracted. It is argued that the fact that permission under Section 44 of the Revenue Code to convert the use from agriculture to non-agriculture purpose or for that matter approval of building plan by the Planning Authority under the provisions of MRTP Act is of no consequence. Those permissions and clearances are relevant with regard to the laws under which the same are granted. Irrespective of those permissions, the Petitioners ought to have taken prior permission of the Authority under the Mineral Laws and in particular, regarding excavation of Minor Minerals. It was argued that the provisions contained in Mines and Minerals (Regulations and Development) Act, 1957 (hereinafter referred to as "the Act of 1957" for the sake of brevity) are wide enough. The same obligates the person intending to excavate minor minerals which includes ordinary earth, to take permission of the Authorized Officer under the Mineral Laws in that behalf.

7 At the outset, we may point out that although the validity of Section 48 (7) of the Revenue Code has been raised in the petition, in all fairness, the counsel for the Petitioners submit that in view of the decision of our High Court in the case of **Modern Builders Vs. The State of Maharashtra and others** reported in **2005 (supplement) Bom. C.R. 89**, the same will have to be answered in the negatived.

8 Be that as it may, after considering the rival submissions, it is essential to first ascertain as to what is the purport of Section 48 of the

Revenue Code. The same reads thus:

> **"48. Government title to mines and minerals**.- (1) The right to all minerals at whatever place found, whether on surface or underground, including all derelict or working mines and quarries, old dumps, pits, fields, bandhas, nallas, creeks, river-beds and such other places, is and is hereby declared to be expressly reserved and shall vest in the State Government which shall have all powers necessary for the proper enjoyment of such rights.
>
> (2) The right to all mines and quarries includes the right of access to land for the purpose of mining and quarrying and the right to occupy such other land as may be necessary for purposes subsidiary thereto, including the erection of officers, workmen's dwellings and machinery, the stacking of minerals and deposit of refuse, the construction of roads, railways or tram-lines, and any other purposes which the State Government may declare to be subsidiary to mining and quarrying.
>
> (3) If the State Government has assigned to any person its right over any minerals, mines or quarries, and if for the proper enjoyment of such right, it is necessary that all or any of the powers specified in sub-section (1) and (2) should be exercised, the Collector may, by an order in writing, subject to such conditions and reservation as he may specify, delegate such powers to the person to whom the right has been assigned.
>
> Provided that, no such delegation shall be made until notice has been duly served on all persons having rights in the land affected, and their objections have been heard and considered.
>
> (4) If, in the exercise of the right herein referred to over any land, the rights of any persons are infringed by the occupation or disturbance of the surface of such land, the State Government or its assignee shall pay to such

persons compensation for such infringement and the amount of such compensation shall, in the absence of agreements, be determined by the Collector or, if his award is not accepted, by the Civil Court, in accordance with the provisions of the Land Acquisition Act, 1894.

(5) No assignee of the State Government shall enter on or occupy the surface or any land without the previous sanction of the Collector unless compensation has been determined and tendered to the persons whose rights are infringed:

Provided that, it shall be lawful for the Collector to grant interim permission pending the award of the Civil Court in cases where the question of determining the proper amount of compensation is referred to such court under sub-section (4).

(6) If an assignee of the State Government fails to pay compensation as provided in sub-section (4), the Collector may recover such compensation from him on behalf of the persons entitled to it, as if it were an arrear of land revenue.

(7) Any person who without lawful authority extracts, removes, collects, replaces, picks up or disposes of any mineral from working or derelict mines, quarries, old dumps, fields, bandhas (wherever on the plea of repairing or constructions of bund of the field or any other plea), nallas, creeks, river-beds, or such other places wherever situated, the right to which, vests in, and has not been assigned by the State Government, shall, without prejudice to any other mode of action that may be taken against him, be liable, on the order in writing of the Collector, to pay penalty not exceeding a sum determined, at three times the market value of the minerals so extracted, removed, collected, replaced, picked up or disposed of, as the case may be;

Provided that, if the sum so determined is less than

one thousand rupees the penalty may be such larger sum not exceeding one thousand rupees as the Collector may impose.

(8) Without prejudice to the provisions in sub-section (7), the Collector may seize and confiscate any mineral extracted, removed, collected, replaced, picked up or disposed of from any mine, quarry or other place referred, to in sub-section (7) the right to which vests in, and has not been assigned by, the State Government.

(9) The State Government may make rules to regulate the extraction and removal of minor minerals required by inhabitants of a village, town or city for their domestic, agricultural or professional use on payment of fees or free of charge as may be specified on the rules."

9 On plain reading of sub-section (1), it is noticed that right to all minerals at whatever place found, whether on surface or underground are declared to be expressly reserved and vest in the State Government. The Government has all powers necessary for proper enjoyment of such rights. This provision restates the position predicated in Chapter III of Part XII of the Constitution of India. Thus, the right to all minerals at whatever place found whether on surface or underground are declared to be expressly reserved and vest in the State Government. The purport of Section 48(1) is inclusive one and very wide. For, besides specifying that all minerals at whatever place found, it further clarifies that "all minerals" whether on surface or underground, including all derelict or working mines and quarries, old dumps, pits, fields, bandhas, nallas, creeks, river-beds and such other places. The intention of legislation is to make it

amply clear that all minerals at whatever place found are reserved and vest in the State Government. That enables the State Government to not only regulate the minerals and prohibit exploitation thereof without lawful authority, but also to levy royalty for permitting any one to deal with the minerals which are reserved for and have vested in the State Government. Sub-section (2) postulates that the right to all mines and quarries includes the right to access to land for the purpose of mining and quarrying and the right to occupy such other land as may be necessary for purposes subsidiary thereto. That right includes the erection of officers, workmen's dwellings and machinery, the stacking of minerals and deposit of refuse, the construction of roads, railways or tram-lines, and any other purposes which the State Government may declare to be subsidiary to mining and quarrying. Sub-section (3) is an enabling provision. It envisages that the State Government may assign its rights over any minerals, mines or quarries to any person. If such right is assigned by the State Government to any person, it is open to the Collector to delegate powers specified in sub-Sections (1) and (2) to the person to whom the right has been assigned so as to authorize that person to exercise those rights for the proper enjoyment of the rights, which the State Government itself could have exercised in terms of sub-Sections (1) and (2). The proviso to sub-Section (3) stipulates that such delegation can be made only after giving notice to all persons having rights in the land affected and their objections are heard and considered. Sub-section (4) provides for paying compensation to the persons, whose

rights over any land are infringed.

10 The crucial provision is sub-section (7) of Section 48. Going by the plain language of this provision, it is seen that it places restriction on extraction, removal, collection, replacement, picking-up or disposing of any mineral from working or derelict mines, quarries, old dumps, fields, bandhas, nullas, creeks, river-beds, or such other places wherever situated, without lawful authority. Thus, this provision is in the nature of prohibition to deal with any mineral which is reserved and vests in the State Government situated at any place, without lawful authority in that behalf of the competent officer.

11 The expression “lawful authority” would take within its fold the requirement of a valid and subsisting assignment of the right of the State Government in relation to the minerals vested in the State, granted as per Section 48(3), in favour of the concerned person, who intends to undertake any of the activities specified in sub-Section (7) concerning such mineral. The expression lawful authority would also take within its fold prior permission of the Mining Officer under the governing Mineral Regulation Laws for undertaking the specified activity *qua* the minerals. The controlling words of this section are “without lawful authority”. The lawful authority referred to in this provision is with regard to the activity of extraction, removal, collection, replacement, picking-up or disposal of any minerals which are reserved and vest in the Government.

12 A priori, permission granted under the provisions of Revenue Code for converting the use of the land from agriculture to non-agriculture use or for that matter approval of the building plan by the Planning Authority in exercise of powers under the provisions of MRTP Act will be of no avail. In as much as, the consideration for grant of permission to change the use of land, under the provisions of Revenue Code would be qualitatively different and distinct than the one required for granting permission under the provisions of the Mineral Laws. In that, while considering application for permission to convert the use of land from agriculture to non-agriculture use, the Authority may grant permission or may refuse the same to secure public health, safety and convenience or if such use is contrary to any scheme for the planned development of the area and the like specified in Section 44 (2) of the Revenue Code. Similarly, while approving building plan, the Planning Authority has to merely consider as to whether, the proposal is in conformity with the development plan of the area and the Planning statues.

13 The argument of the Petitioners that the MRTP Act deals with the use of the land and that the definition of development would cover the activity of excavation and since approval to construct the building in conformity with the development plan is granted by the Municipal Authority, that would be sufficient compliance. This argument does not commend to us. As is noticed earlier, the permission for

approval given by the Municipal Authority is in the context of the requirements of the development plan and can have no impact on the regulation of mineral, which power is exercised by the Competent Officer and the State Government under the different set of enactments including the Revenue Code.

14 Indeed, the term "mineral" appearing in Section 48 has not been defined in the Revenue Code. It is well established position that the term "mineral" has no definite meaning. To borrow the expression used by the Apex Court, the word "mineral" is not a term of art. It is a word of common parlance, capable of multiplicity of meanings depending upon the context. This legal position is enunciated in the case of **M/s. Banarsi Dass Chadha and Brothers Vs. Governor, Delhi Administration and others (1978) 4 SCC 11**. The Apex Court has followed its earlier decision in **Bhagwan Dass Vs. State of U.P., (1976) 3 SCC 784**, where the Apex Court rejected the argument that the sand and gravel, which are deposited on the surface of the land and not under the surface of the soil cannot be called mineral and equally so, any operation by which they are collected or gathered cannot properly be called mining operation. The Apex Court opined that it is wrong to assume that mines and minerals must always be sub-soil and that there can be no minerals on the surface of the earth. While considering the definition of mining operation and minerals in the Act of 1957, it held that minerals need not be sub-terranean and that mining operation covered every operation undertaken

for the purposes of “winning” any mineral. Further, “winning” does not imply a hazardous or perilous activity. The word simply means “extracting a mineral” and is used generally to indicate any activity by which the mineral is secured. The meaning of word mineral can also be traced to Section 3(a) of the Mines and Minerals (Development and Regulations) Act, 1957, which includes all minerals except mineral oils. Section 3(e) of the said Act also defines minor minerals, which reads thus:

> “3. .....
> (e) "minor minerals" means building stones, gravel, ordinary clay, ordinary sand other than sand used for prescribed purposes, ordinary earth and any other mineral which the Central Government may, by notification in the Official Gazette, declare to be a minor mineral;”

15 In exercise of the power conferred by Section 3(e) of the Act of 1957, the Central Government declared the following minerals to be minor mineral i.e.: “Boulder, Shingle, Chalcedony pebbles used for ball mill purposes only, limeshell kankar and limestones used for lime-burning, murrum, brick-earth, fuller’s earth, bentonite road metal, reh-matti, slate and shale when used for building material.”

16 It will be useful to advert to the subsequent notification issued by the Government of India dated 03rd February, 2000, which reads thus:

"**N O T I F I C A T I O N**

GSR (E) – In exercise of the powers conferred by Clause (e) of Section 3 of the Mines and Minerals (Development and Regulation) Act 1957 (67 of 1957), the Central Government hereby declares the 'ordinary earth' used for filling or leveling purposes in construction of embankments, roads, railways, buildings to be a minor mineral in addition to the minerals already declared as minor minerals hereinbefore under the said clause.

(F. No. 7/5/99-M.VI)
Sd/-
[ S.P.GUPTA ]
JOINT SECRETARY TO THE GOVERNMENT OF INDIA"
(emphasis supplied)

17 Going by the definition of minor mineral, even the ordinary clay, ordinary sand and also ordinary earth used for filling or leveling purposes in construction of buildings have been treated as minor minerals. Counsel for the Petitioners placed reliance on the unreported decision of Division Bench of our High Court (Nagpur Bench) in the case of **Rajendra Kishanlal Sancheti Vs. The Union of India and ors** in **Writ Petition No.1447 of 1988** decided on July 10, 1989. The said decision proceeded on the basis that "ordinary earth" was not a minor mineral. The Court noticed that the Central Government had not issued any declaration to that effect. However, after the issuance of Notification dated 3rd February, 2000 referred to above, this plea is unavailable. Hence that decision is of no avail to the Petitioners.

18 The said Act also provides for the definition of the mining lease and mining operations. Section 3(c) and (d) of the said Act read thus:

> "3. .....
> (c) "mining lease" means a lease granted for the purpose of undertaking mining operations, and includes a sub-lease granted for such purpose;
>
> (d) "mining operations" means any operations undertaken for the purpose of winning any mineral."

19 We shall refer to the other provisions of the said Act of 1957 a little later. Reverting back to the purport of Section 48 (7) of the Revenue Code, it mandates that lawful authority is the quintessence for undertaking activity to extract, remove, collect, replace, pick-up or dispose of any mineral which is declared as reserved and has vested in the State Government. The Petitioners, however, would submit that the said activity should necessarily relate to a working or derelict mines, quarries, old dumps, fields, bandhas, nallas, creeks, river-beds, or such other places similar to the ones referred to earlier. It is contended that the expression "such other places wherever situated" will have to be read *ejusdem generis*. According to the Petitioners, excavation of land for construction of a building does not qualify the said requirement so as to attract the rigours of seeking permission from the Authorized Officer under the mineral laws or otherwise.

20 In the first place, even ordinary earth is treated as mineral. Thus, the activity of extraction thereof would result in mining operation albeit for laying of foundation of the building. In any case, the process of restoring the extracted ordinary earth in the same place or using it for leveling or landscaping is nothing but, using the extracted earth for filling or leveling purposes in construction of building. Further as noticed earlier, the term “lawful authority” in sub-Section (7) is not only ascribable to permission from the authorized officer under the Mineral Laws, but also refers to a valid and subsisting assignment of the right of the State Government in relation to any mineral vested in it, which can be exercised by the person with regard to such mineral at whatever place found, whether on surface or under ground. It is not possible to limit the requirement of permission for extraction, removal, collection, replacement, picking-up or disposal of the minerals “only from” the places such as derelict or working mines, quarries, old dumps, fields, bandhas, nallas, creeks, river-beds. That interpretation would be leaving out the other areas or places covered by the latter part of the same provision, which is very wide and opens with disjunctive “or”. Significantly, the legislature has used different expression in the same Section 48. In sub-section (7), preceding the words “such other places,” the word used is “and”; whereas in sub-section (7), preceding the same words “such other places,” the word used is “or”. Both are intended to signify that all minerals at whatever place found are expressly reserved and shall vest in

the State Government. As noticed earlier, sub-section (7) uses the expression, “or such other places wherever situated, the right to which, vests in, and has not been assigned by the State Government”. Indubitably, this expression covers all minerals situated at places referred to in Section 48 (1) of the Revenue Code. Sub-Section (1) stipulates that right to all minerals at whatever place found, whether on surface or underground, are declared to be expressly reserved and vest in the State Government. To remove any doubt, the Legislature has then referred to areas, which are also covered by using inclusive term. Notably, in sub-section (7), after mentioning such specific places it is further provided “or such other places wherever situated, the right to which, vests in, and has not been assigned by the State Government”. In our opinion, if sub-section (7) is read as a whole keeping in mind the expansive provision in sub-section (1) of the same provision and which we must, it covers all places where minerals can be found. Thus understood, no person can extract, remove, collect, replace pick-up or dispose of any minerals which have vested in the State Government at whatever place found, without prior permission of the Authorized Officer not only under the mineral laws but also under a valid and subsisting assignment of rights of the State Government thereto. That permission is required to be obtained not only to regulate and develop the mines and minerals, but also to compensate the Government in whom the same is reserved and vests by payment of royalty amount therefor.

21 The argument of the Petitioners that the expression appearing in sub-Section (7) “such other places wherever situated”, should be read *ejusdem generis* clearly overlooks the setting in which the same appears. It not only refers to some of the specific places, but clarifies that the extraction, removal, collection, replacement, picking-up or disposal of any mineral, which vests in the State Government - as is predicated in sub-Section (1) of Section 48, which in turn, is also an inclusive provision covering all places at whatever place the mineral is found. Considering the context and the objective as also the mischief sought to be addressed by the enactment, it would not be proper to give restricted meaning to the words “or such other places wherever situated”, which are of general import. It is well established position that the principle of *ejusdem generis* has to be applied with care and caution. It is the duty of the Court to give the words its plain and ordinary meaning. If the restricted meaning as suggested by the Petitioners is to be given to the said words, it would negate the right of the State Government in respect of the minor mineral which vests in it at whatever place found by virtue of Section 48 (1) of the Revenue Code. Section 48 if read as a whole, would not permit such narrow interpretation of the words “or such other places wherever situated” appearing in sub-Section (7). On the other hand, the governing factor is that all minerals at whatever place found, which have vested in the State Government, the same will have to abide by the requirement of assignment of the rights of the State Government in favour of person intending to deal with the said minerals

by undertaking specified activities of extraction, removal, collection, replacement, picking-up or disposal thereof and, also permission of the competent authority under the mineral laws. Considering the plain language of Section 48 and the legislative interest of reserving and vesting of all minerals wherever situated, it is not possible to fathom the argument of interpreting expression "such other places wherever situated *ejusdem generis* with the places preceding thereto. That interpretation would result in not only taking a pedantic view but also run contrary to the sweep of the provision, if read as a whole. We therefore, do not wish to burden this judgment with analysing the several decisions cited by the counsel for both the sides on the interpretation of statutes and in particular on the application of the principle of *ejusdem generis*. The said decisions are the case of Grasim Industries Ltd- (2002) 4 SCC 297; Siddeshwari Cotton Mills (P) Ltd- AIR 1989 SC 1019; Amar Chandra Chakraborty – (1972) 2 SCC 442; Tillmanns & Company – 1908 KB 385; Ichchapur Industrial Cooperative Society Ltd.- (1997) 2 SCC 42; State of Bombay Vs. Ali Gulshan – AIR 1955 SC 810; Hamdard Dawakhana Wakf – AIR 1965 SC 1167; K.K.Kochuni – AIR 1960 SC 1080; Lila Vati Bai – AIR 1957 SC 521; and Jagdish Chandra Gupta – AIR 1964 Sc 1882.

22 Suffice it to observe that any specified activity, without lawful authority, would invite liability of payment of royalty and also of penalty. The activities referred to in sub-Section (7) do not exclude excavation of ordinary earth for laying of foundation of the proposed building as such,

but the provision is wide enough to attract even a case of simplicitor removal, collection, replacement or disposal of any mineral, which vests in the State Government. A priori, before undertaking the activity of excavation for the purposes of laying foundation of the building, as it would result in extraction, removal, collection, replacement, picking-up of the ordinary earth, which means minor mineral, it would be imperative to not only obtain assignment of the rights of the State Government in relation to such mineral, which vests in the State Government, but also obtain prior permission of the Mining Officer under the Mineral Laws. Failure to do so, would not only entail in imposing royalty and penalty in terms of sub-Section (7), but can also invite other actions, which are permissible by the Revenue Code as also the Mineral Laws.

23 We shall now turn to the relevant Mineral Laws. Ancient amongst the same, is the Mines Act, 1952. It defines the term “mine” in Section 2(j) to mean any excavation where any operation for the purpose of searching for or obtaining minerals. The said definition reads thus:

> “2. .....
> (*j*) “mine” means any excavation where any operation for the purpose of searching for or obtaining mineral has been or is being carried on and includes-
> (i) all borings, bore holes, oil wells and accessory crude conditioning plants, including the pipe conveying mineral oil within the oilfields;
> (ii) all shafts, in or adjacent to and belonging to a mine, whether in the course of being sunk or not;
> (iii) all levels and inclined planes in the course of being driven;

(iv) all open cast workings;
(v) all conveyors or aerial ropeways provided for the bringing into or removal from a mine of minerals or other articles or for the removal of refuse therefrom;
(vi) all adits, levels, planes, machinery, works, railways, tramways and sidings in or adjacent to and belonging to a mine;
(vii) all protective works being carried out in or adjacent to a mine;
(viii) all workshops and stores situated within the precincts of a mine and under the same management and used primarily for the purposes connected with that mine or a number of mines under the same management;
(ix) all power stations, transformer sub-stations, convertor stations, rectifier stations and accumulator storage stations for supplying electricity solely or mainly for the purpose of working the mine or a number of mines under the same management;
(x) any premises for the time being used for depositing sand or other material for use in a mine or for depositing refuse from a mine or in which any operations in connection with such sand, refuse or other material is being carried on, being premises exclusively occupied by the owner of the mine;
(xi) any premises in or adjacent to and belonging to a mine on which any process ancillary to the getting, dressing or preparation for sale of minerals or of coke is being carried on;" (emphasis supplied)

24 The definition of mine is an inclusive term. The plain language of this provision indicates that any excavation which results in, inter alia, obtaining minerals, is covered by this definition. Thus, the activity of excavation of land even for laying foundation of a building has the effect of obtaining minerals. Even that activity is covered by the

definition of mine. It would make no difference that a person while excavating land was not searching for the minerals. The term minerals has been defined in Section 2(jj) of the Act of 1952, which reads thus:

> "2. .....
> (*jj*) "minerals" means all substances which can be obtained from the earth by mining, digging, drilling, dredging, hydraulicing, quarrying or by any other operation and includes mineral oils (which in turn include natural gas and petroleum);"

Significantly, this definition refers to all substances, which can be obtained from the earth by undertaking specified activities.

25 A priori, no mining operation can be carried out without giving notice thereof to the appropriate authority under the relevant legislation. We will once again revert to the Act of 1957. The definition of minerals and mining operations, and minor minerals have already been alluded to earlier. Section 4 of the said Act prohibits any person from undertaking any reconnaissance, prospecting or mining operations in any area without permit or licence or lease granted under that Act in that behalf. The terms mining operations, prospecting licence and prospecting operations may be of some relevance to us, which read thus:

> "3 .....
> (d) "mining operations" means any operations undertaken for the purpose of winning any mineral;
>
> (g) "prospecting licence" means a licence granted for the purpose of undertaking prospecting operations ;

> (h) "prospecting operations" means any operations undertaken for the purpose of exploring, locating or proving mineral deposits."

26 According to the Petitioners, the activity of excavation of land for laying foundation for the proposed building to be constructed thereon is not covered by the said provisions. That argument does not commend to us. The expression mining operations means any operation undertaken for the purposes of winning any minerals. That operation need not be hazardous or perilous activity, but can be simply to secure the mineral. By virtue of Section 3(e) of the Act of 1957, even ordinary earth is a minor mineral and the activity of excavation of the land for whatever purpose would result into winning minor mineral therefrom. The term winning is not defined in the Act. The dictionary meaning of term winning is to gain, to reach, to attain, to allure.

27 It may be useful to advert to the decision of the Apex Court in the case of **Gujarat Pottery Works Vs. B.P Sood, Controller of Mining leases for India** reported in **AIR 1967 SC 964**. Paragraph Nos. 16 to 24 of the said decision reads thus:

> **"16.** According to the *Shorter Oxford Dictionary*, "to win" has the meanings: (*i*) to get or extract coal or other mineral from the mine, pit or quarry; (*ii*) to sink shaft or make excavation so as to reach a seam of coal or vein of ore and prepare it for working.

**17.** The expression "to win" interpreted in the English cases was in respect of the context of the expression used in certain leases. The expression "winning" in a constitutional provision like Article 31-A(1)(*e*) should be given a wider meaning as the Constitution-makers would be using it to cover cases which deal with the obtaining of minerals and in that case that wider meaning would be "to get or extract the mineral from the mine". The object of the constitutional provision was to make the law providing for the extinguishment or modification of a lease etc., in connection with mineral rights immune from the provisions of Articles 14, 19 and 31. There could be no logical reason for not to cover the leases which allowed the working of the mines after the minerals in the mines had been won, in the narrow sense i.e., the making of such arrangements which would allow the working of the mine. Modifying the provisions of any lease merely for making arrangements for the working of the mine could not be effective in making the law free from the requirements of the various minerals in the public interest. Modification of the leases governing the working of the mines could be necessary for the public interest. Section (2) of both the 1948 and the 1957 Acts declared that it was expedient in the public interest that the Union should take under its control the regulation of mines and the development of minerals to the extent thereinafter provided.

**18.** We are therefore of opinion that the expression "winning" in Article 31-A(1)(*e*) be construed to mean "getting or extracting minerals from the mines and other incidental purposes".

**19.** Our attention has been drawn to the use of the word "winning" along with other expressions necessary for the proper working of a mine in the Acts and Rules, and it is urged that the word "winning" has been there used in a narrow sense. In the context of the Acts and Rules, the legislature or the Rule-making authority had to use all possible expression for the purposes of the mining leases so that all conceivable types of mining leases could be

covered by the provisions of the enactment and the Rules. "Mining lease" according for Section 3 Clause (*d*) of the 1948 Act, means a lease granted for the purpose of searching for, winning, working, getting, making merchantable, carrying away or disposing of minerals or for the purposes connected therewith and includes an exploring or a prospecting license. The definition is very comprehensive and is with the object indicated earlier.----------

**20.** It is significant to notice that the expression "mine", according to clause (*b*) of Section 3, means any excavation for the purpose of searching for or obtaining minerals. Here the word "obtain" is used to cover the various processes necessary to get the mineral and would include the processes covered by the expression "winning", "working", "getting" etc.

**21.** "Mining lease", according to Rule 3(*i*) of the 1949 Rules, means a lease to mine, quarry, bore, dig and search for, win, work and carry away any mineral specified therein. This definition of the "mining lease" does not cover all the purposes mentioned in Section 3 (*d*) of the 1948 Act. The definition deals with such matters which are covered by the Rules, as a "mining lease" is defined for the purposes of the Rules.

**22.** Rule 41(1(*ii*) of the 1949 rules reads:

> "If any mineral not specified in the lease is discovered in the leased area he shall not win and dispose of such mineral without obtaining a lease therefore ....."

It is clear that the word "win" here includes the getting of the mineral as it is only thereafter that the lessee can dispose of it.

**23.** Section 3(*c*) of the 1957 Act defines "mining lease" to mean a lease granted for the purpose of undertaking mining operations and includes a sub-lease granted for mining operations.

**24.** It follows that the various definitions in the Act or in the Rules referred to above are for a limited purpose and

> that the word “winning” or “win” dos not always have the same content, and that therefore they cannot be any guide for construing the word “winning”, in the constitutional provision of Article 31-A(1)(*e*).”

28 Section 48 (9) of the Revenue Code empowers the State Government to make rules to regulate the extraction and removal of minor minerals required by inhabitants of a village, town or city for their domestic, agricultural or professional use on payment of fees or free of charge as may be specified on the rules. Explanation below the said sub-section provides that the term “minor minerals” referred to in sub-section(9) would mean the minor minerals in respect of which the State Government is empowered to make rules under Section 15 of the Act of 1957. In exercise of powers vested thereunder, the Government of Maharashtra has framed Maharashtra Land Revenue (Extraction and Removal of Minor Minerals) Rules, 1968, which essentially deal with the extraction and removal of minor minerals from the bed of the sea or from the bed of creek, river or nalla or from any unassessed Government waste land not assigned under Section 22 or any tank the right to which vests in the State Government. These are the sources specified in Rule 2 of the said Rules of 1968. Rule 2 thereof reads thus:

> “ **2. Removal of Minor Minerals by villagers for their own use**:- Subject to the provisions of these rules with the previous permission in writing of the officers mentioned in column 1 of the Table below, but without payment of any fees, any inhabitant of any village, town or city, may, for

this domestic or agricultural purpose, remove from the area within the jurisdiction of such officer any earth, bank stone, kankar, gravel, sand or murum or any other material (each of which is a minor mineral) the value of which does not exceed the amount specified against each such officer in column 2 of the said Table, from the bed of the sea or from the bed of creek, river or nalla or from any unassessed Government waste land not assigned under Section 22, or any tank the right to which vests in the State Government, within the limits of village, city or town in which he resides or in which the land for the benefit of which the materials are required is situated.

**TABLE**

| Officer granting permission | Limit of value of minerals" |
|---|---|
| Talathi | Not exceeding rupees one hundred |
| Circle Inspector or Circle officer | Not exceeding rupees two hundred fifty. |

---"

29 The Bombay Minor Mineral Extraction Rules, 1955 framed in exercise of powers conferred under the provisions of Minerals Concession Rules, 1949 provides that definition of Competent Officer in Rule 2(1)(i). Sub-clause (a) pertains to lands in-charge of the Forest Department of the Government. Sub-clause(b) pertains to the quarries in-charge of the Public Works Department and sub-clause (c) deals with "other cases", where the Collector of the District concerned is designated as Competent Officer. Sub-Rule 1(A) provides that for the purpose of Chapter IV of the Rules, the Competent Officer would mean Mamlatdars and Mahalkaris in case where the quantity of minor minerals to be

extracted and removed from any specified land within the limits of their respective jurisdiction does not exceed 100 brass and for quantity of minor minerals in excess thereof upto 1000 brass are Assistants and Deputy Collectors. The term quarrying lease has been defined in Rule 2 (1)(iv), which reads thus:

> " 2. (1) .....
> (iv) "*Quarrying lease*" means a lease to mine, quarry, bore, dig and search for, win, work and carry away any minor mineral specified therein;"

30 We may now refer to the term "quarrying permit" and "specified minor mineral" in Rule 2 (1)(v) and (iv), which reads thus:

> "2. (1) .....
> (v) "*Quarrying permit*" means a permit granted under Chapter IV of these Rules to extract and remove any minor mineral in specified quantities ;
>
> (vi) "Specified minor mineral" means limestone, limeshell or such other minor mineral as may be specified by Government by notification in the *Official Gazette*"

31 Chapter II of this Rules provides for grant of "quarrying lease" in respect of land in which "minerals belonging to Government". Chapter III deals with grant of "quarrying lease" in respect of land in which "minerals belong to private persons". Chapter IV deals with grant of "quarrying permits" in respect of lands in which "minerals belong to Government."

32 It was argued that Rule 29 of the Rules of 1955 have no application to land belonging to private person. Further, the liability to pay royalty would arise only in case of grant of Quarrying permit to extract minor mineral. The activity of laying foundation is neither extracting or removing minor mineral. This argument deserves to be stated to be rejected. The fact that land belongs to private person does not make any difference. For, all the mineral, wherever situated, either on Government land or Private land, have been expressly reserved for and have vested in the State Government by virtue of Section 48(1) of the Code. All such minerals are regulated by the Government and the Government has all powers to prohibit use thereof by any person or to grant permission under the mineral laws and assign its rights to that person on payment of royalty. Besides, the work of excavation for laying foundation of a building is in the nature of quarrying activity. It involves activity to mine, quarry, bore, win, work, extract and remove any minor mineral, which includes ordinary earth. The Apex Court has held that the word “winning” or “win” does not always have the same context. (See Gujarat Pottery Works (P) Ltd. Vs. B.P Sood, AIR 1967 SC 964 and Bhagwan Dass (supra) paragraph 13). Whether the nature of excavation to be undertaken by the person would attract payment of royalty is a question of fact that has to be determined by the authorized officer keeping in mind the relevant provisions of the governing Act and the Rules made thereunder. In a given case, if the nature of excavation does not attract liability to pay royalty amount, the question of imposing penalty would not

arise even if such work has been undertaken without a formal permission in that behalf. That aspect will have to be considered by the concerned authority on case to case basis.

33 Having regard to the finding recorded by us, that ordinary sand, ordinary clay and even ordinary earth is a minor mineral at wherever place found, and which has vested in the State Government, any person intending to extract, remove the same, to be later on used for filling of foundation or for creating landscape on the same land or otherwise is obliged to not only take prior permission of the Authorized Officer under the Mineral Laws, but must also have the rights of the State Government in respect of such mineral assigned in its favour. In absence thereof, the excavation and removal of minor mineral from any land is impermissible and if done, it would be without lawful authority.

34 The learned counsel for the Petitioners has invited our attention to the decision of the Division Bench of our High Court in the case of **Ravi Industries, Nagpur and others Vs. Western Coalfields Ltd and others** reported in **2007(1) Mh.L.J 791**. We fail to understand as to how this decision can be of any avail to the Petitioners. In that case, on facts, the Court found that the Petitioners were neither lease holder nor extracting mineral from the mines for utilizing the same in the construction activities carried out under the Government contracts. That was the basis of challenge, which has been answered by the Court. In

the present petitions, it is virtually admitted position that the Petitioners intended to develop the land themselves by constructing building for residential or commercial purposes. Therefore, they had obtained necessary approvals from the authorities. In furtherance thereof, the Petitioners were required to excavate the land for laying foundation. The earth that was to be excavated, would be later on used for refilling the foundation or for landscaping the same plot. In other words, it is admitted position that the Petitioners were required to excavate the land themselves.

35 Our attention was also invited to the unreported decision of the Apex Court in the case of **M/s. Som Datt Builders Ltd. Vs. Union of India and ors** in **Civil Appeal No. 2088 of 2007** decided on 09th November, 2009. The core issue addressed by the Apex Court in this case was whether "ordinary earth" used for filling or leveling purpose in the construction of embankment, roads, railways, buildings was validly declared to be a minor mineral by the Central Government vide notification dated 03rd February, 2000 issued under Section 3 (e) of the Act of 1957. That challenge has been negatived by the Apex Court, following its earlier reported decisions. The Court held that "ordinary earth" is comprehended within the meaning of the word "any other mineral". Further, the Government was within its power to notify the word earth as minor mineral.

36 Reliance was placed on the decision in the case of **M/s. Jaiprakash Associates Ltd. Vs. State of Uttranchal** reported in **AIR 2007 Uttaranchal 41**. In that case, the Petitioner had challenged the demand letter issued by the Respondent demanding amount on account of royalty and penalty, which was imposed for obtaining the mineral in the course of digging the foundation of the building. The Court held that the Petitioner was not liable to pay the royalty. That view has been taken essentially in the context of Rule (21) of the U.P. Minor Mineral (Concession) Rules, 1963. The Court held that the holder of the mining lease is primarily liable to pay royalty in respect of the mineral removed from the leased area. It found that the Petitioner did not hold any mining lease and as such was not liable to pay royalty in respect of mineral extracted by him. In the present case, wider issue has been raised before us. In the context of provisions of Maharashtra Land Revenue Code, which mandates that no specified activity should be resorted to in respect of the mineral, which vests in the State Government and has not been assigned by the State Government. Accordingly, this decision will be of no avail to the Petitioners.

37 Accordingly, we hold that excavation activity even for the purposes of laying foundation of the building in respect of which approval of the Municipal Authority has already been obtained, would still attract rigours of Section 48(7) of the Revenue Code, if the person has not been assigned with the rights of the State Government in respect of such

mineral, which have vested in the State Government. Further, a prior permission of the authorized officer with respect to the mineral in question is essential, even if the activity is only of excavation for the purposes of laying foundation of the building. For, it is still in the nature of mining operation, even if it is not for searching mineral.

38 It was argued before us that the Authority has mechanically imposed penalty for infringement committed by the Petitioners, which exceeds even beyond the statutory regime upto three times the market value of the mineral. From the language of Section 48 (7), it is clear that the appropriate authority has discretion to impose penalty upto three times of the market value. In other words, the authority has to exercise its discretion on case to case basis for just and valid reason. But, in any case, cannot impose penalty, which would exceed three times of the market value of the mineral in question. We therefore, find force in the submission of the Petitioners that Section 48 (7) is an enabling provision, which authorises the appropriate authority to impose penalty upto three times the market value and does not mandate that in every case, it should be minimum three times the market value of the mineral. However, those are matters, which will have to be considered by the appropriate authority or the Appellate authority as the case may be on the basis of facts of each case. We express no final opinion in that regard.

39 As is noticed earlier, the Petitioners have directly rushed to

this Court by way of writ petition under Article 226 of the Constitution of India, some of them soon after issuance of show-cause-notice; whereas in some cases after the final order was passed by the appropriate authority. The fact remains that the Petitioners have alternative efficacious remedy of pursuing their individual grievance before the concerned authority. Firstly, by submitting reply to the show-cause-notice and if the final order of the appropriate authority was to be adverse, can take recourse to remedy of statutory appeal. The concerned authority will have to decide the respective proceedings on its own merits in accordance with law. Indeed, the concerned authority will have to keep in mind the observations made by us hitherto. We keep all other questions in the respective proceedings, concerning each of the Petitioners before us, open to be examined by the appropriate authority or the Appellate Authority as the case may be, on its own merits.

40 Accordingly, all these Petitions are disposed of on the above terms. Parties to bear their own costs.

[ R.M. SAVANT, J ] [ A.M. KHANWILKAR, J ]