

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

WRIT PETITION (PIL) NO. 231 of 2013

FOR APPROVAL AND SIGNATURE:

HONOURABLE THE CHIEF JUSTICE MR. BHASKAR BHATTACHARYA
and
HONOURABLE MR.JUSTICE J.B.PARDIWALA

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- 1 Whether Reporters of Local Papers may be allowed to see the judgment ?
- 2 To be referred to the Reporter or not ?
- 3 Whether their Lordships wish to see the fair copy of the judgment ?
- 4 Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 or any order made thereunder ?
- 5 Whether it is to be circulated to the civil judge ?

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KHARAI JUTH GRAM PANCHAYAT & 1....Applicant(s)

Versus

STATE OF GUJARAT & 7....Opponent(s)

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Appearance:

MR MEHUL SHARAD SHAH, ADVOCATE for the Applicant(s) No. 1 - 2

MR P.K. JANI, GOVERNMENT PLEADER for the Opponent(s) No. 1

MR DUSHYANT DAVE, SR. COUNSEL WITH MR. ANKIT SHAH, ADVOCATE with

MR ANUJ K TRIVEDI, ADVOCATE for the Opponent(s) No. 7

MR BIREN A VAISHNAV, ADVOCATE for the Opponent(s) No. 5

NOTICE SERVED BY DS for the Opponent(s) No. 1 - 4 , 6

MR. MIHIR JOSHI, SR. COUNSEL with MR SANDIP SINGHI FOR SINGHI & CO, ADVOCATE for the Opponent(s) No. 8

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CORAM: HONOURABLE THE CHIEF JUSTICE MR.
BHASKAR BHATTACHARYA
and
HONOURABLE MR.JUSTICE J.B.PARDIWALA

Date :20/06/2014

CAV JUDGMENT

(PER : HONOURABLE MR.JUSTICE J.B.PARDIWALA)

1. By this writ application in the nature of a Public Interest Litigation, the petitioners (1) Kharai Jooth Gram Panchayat through its Sarpanch Smt. Devalben Gabha Rabari and (2) Haresh Sadalaji Vyas residents of Village Kapurasi, initially prayed for the following reliefs:-

(A) to issue a writ of mandamus or any other appropriate writ, order or direction, directing the respondents, their agents, servants to remove the encroachment from the Gauchar land, from the Water Bodies and Lakes and from the Public Road and be further pleased to direct the private respondents' companies to identify their land by putting up wire fencing as per agreement before continuing mining activities;

(B) to issue a writ of mandamus or any other appropriate writ, order or direction, restraining the private respondents cement companies not to cause any pollution in the River, Lakes and Water Bodies and the Gauchar land by way of throwing the mining and cement waste into it;

(C) to issue a writ of mandamus or any other appropriate writ, order or direction, directing the respondents to provide employment to the local residents of the village and to the agriculturists whose land were acquired by giving assurance of employment.

(D) pending admission, hearing and final disposal of this petition, Your Lordships may be pleased to restrain the respondent No.7 from transferring the mining lease and the entire land in favour of respondent No.8 till the illegalities are cured and the conditions of lease agreement are complied with by respondent No.7.

(E) pending admission, hearing and final disposal of this petition, Your Lordships may be pleased to direct the respondent No.7 to install the fencing around the land allotted to it for mining purpose and be further pleased to direct respondent No.7 to open the gauchar land, the rivers, lakes and other Water bodies, encroached upon by it immediately.

(F) to pass such other and further orders as may be just and necessary in the interest of justice in favour of the petitioners."

Subsequently, however, the petitioners have amended the application and have prayed for new reliefs as under:-

“C-1) To issue a writ of mandamus or any other appropriate writ, order or direction, directing the respondent nos.1 and 2 to cancel the lease granted to Gujarat Anjan Cement Limited for breach of conditions of lease agreements and other orders and be further pleased to quash and set aside the order dated 29.10.2012 (ann.:I)

C-2) Alternatively, to issue a writ of mandamus or any other appropriate order or direction directing the respondent no.1 and 2 to recover the premium/charges from respondent nos.6 and 7 for illegal transfer of land without prior permission of the State Government and be further pleased to direct respondent nos.1 and 2 not to grant permission to transfer the land from respondent nos.7 and 8 and resume the lease land into government forthwith.”

2. The case made-out by the petitioners in this petition may be summarized as under :

(i) The Government of Gujarat allotted Government waste land, Gauchar land and other parcels of land of the agriculturists in favour of the respondent no.6, namely, Gujarat Anjan Cement Ltd. Although the respondent no.6 Anjan Cement Ltd., obtained various permissions from different departments, yet without commencing any production

activities transferred the lease executed with the Government in the year 2009 in favour of Jayprakash Associates.

(ii) It is the case of the petitioners that Jayprakash Associates got merged with Jaypee Cement Corporation Ltd., in the year 2012. At present the respondent no.7 Jaypee Cement Ltd., is operating the cement plant at Lakhpat and Abdasa Talukas flouting the conditions of lease. It is alleged that the respondent no.7 company has encroached upon the Gauchar land, water bodies, lake and also upon the private lands of various agriculturists.

(iii) The respondent no.7 Jaypee Cement is in process of transferring the mining lease in favour of respondent no.8 Ultratech Cement Company for the sum of Rs.3750 crore.

(iv) It is the case of the petitioners that vide letter dated 30/1/2013 the Collector, Kutchh was informed about the encroachment made by the respondent no.7 Jaypee Cement in the Gauchar land and also raised various grievances regarding illegal mining activities in the water bodies and the river situated in the village.

(v) The Geology Department vide letter dated 2/4/2013 intimated the respondent no.7 Jaypee Gujarat Cement Ltd., to erect a wire-fencing around the land according to the measurement-sheet and also according to the contract of lease. It is the grievance of the petitioners that the Department has been only issuing Show Cause Notices to the company but thereafter no action is being taken in that regard.

vi) It is also the case of the petitioners that one Chhabilbhai Patel, an M.L.A. from Abdasa, vide letter dated 28/5/2013 has drawn the attention of the Secretary, Industries & Mines Department about the illegal mining activities by the company and has also drawn attention to the fact that the company is not doing back-filling work after excavating the land.

vii) One Shri P.C.Gadhvi –the Leader of the Ruling Party of the Taluka Panchayat, Lakhpat also informed the Director of the respondent no.7 company vide letter dated 28/7/2013 regarding the difficulties faced by various people of the villages Vayor and Kharai on account of the illegal mining activities carried-out by the company. Shri Gadhvi has also requested the Secretary, Industries & Mines Department vide letter dated 24/8/2013 not to grant permission to the respondent no.7 company to sell the land to any other company unless and until the illegal mining activities are stopped and the conditions of the lease agreement are complied with by the respondent no.7 company.

viii) It is alleged that the respondent -7 company has encroached upon the water-bodies, lake and even the public way in such a manner that the village people are not allowed to pass through one village to the other. The agriculturists are facing lot of difficulties in finding suitable place for their cattle to graze. It is alleged that vide office order dated 30th May, 2009 the respondent no.6 Anjan Cement Limited informed the villagers that the village people will have to register their names, addresses and vehicle number with the Security Personnel of the company while passing from Tarangvada Gate to Vaghapddhar.

ix) It is also the case of the petitioners that one Shri Bharubha Jadeja of Fulay Jooth Gram Panchayat had preferred a representation dated 12th January, 2013 addressed to the Collector, Kutchh regarding the closure of the public way by Jaypee Cement between village Vayor and village Vaghapaddhar.

x) According to the petitioners the respondent no.6 Anjan Cement Ltd., acquired agricultural land from various agriculturists without paying any compensation on the assurance that in lieu of the acquisition of the agricultural land, the company will provide employment to the family members. In this regard the District Employment Exchange Office has drawn the attention of the Personnel Manager of the respondent no.7 company about the non-implementation of the agreement executed by the company with the village people drawing attention of the company to the Circular of the Labour Department dated 31/3/1995. The company was also informed to provide employment to the local people while filling-up the vacant posts in the company.

xi) The petitioners have also raised issues regarding the pollution. According to the petitioners, on account of the mining activities, the company is dumping the cement waste in the open land near the agricultural fields and the water bodies. Due to alkali dust and the particles of cement, the agricultural fields and the water-bodies are badly affected creating lot of problems of pollution hazards.

xii) The Geology Department, vide letter dated 5th August,

2013 informed the General Manager of the respondent no.7 company regarding the issue of Silica – alkali dust and to take preventive measures regarding the same. However, it is the case of the petitioners that till this date no preventive measures have been taken by the company.

xiii) It is also the case of the petitioners that the respondent no.6 company obtained land from the State Government in the year 1997 and also sought permission to purchase the land from private agriculturists for industrial purpose. The Deputy Collector, Kutchh vide order dated 18/6/2008 had granted the necessary permission to purchase the land for industrial purpose with a specific condition attached to the same that within a period of six months the agricultural land shall be converted to non-agricultural land. According to the petitioners, neither the respondent no.6 Gujarat Anjan Cement Ltd., nor the respondent no.7 Jaypee Cement have obtained any N.A. permission and in absence of such N.A. Permission the company has started its operations. According to the petitioners the company applied for N.A. Permission only in the year 2013. According to the petitioners, the Collector, Kutchh dismissed all the applications filed by the company seeking N.A. permission.

xiv) It is also the case of the petitioners that till this date no Environment Clearance Certificate has been obtained by the respondent no.7 Jaypee Cement and in the absence of the same, the mining activities at the site are carried out illegally. The respondent no.7 Jaypee Cement Ltd., vide letter dated 13/8/2012 had informed the Geologist, Bhuj, regarding the

delay in the commencement of the mining activities in absence of any clearance certificate issued by the National Wild Life Board. According to the petitioners a specific condition has been imposed in the Lease Deed that the mining activity should be started within a period of two years. It is the case of the petitioners that within two years the company failed to commence with the mining activities and has also failed to obtain the permission from the State Wild Life Board regarding the environment clearance.

xv) According to the lease agreement dated 19th October, 2008 it is incumbent on the part of the company to obtain the N.A. permission from the competent authority before starting the mining operations. There is also a condition imposed that the actual mining shall not be commenced until the forest and environment clearance is issued by the Ministry of Environment & Forest. It is also the case of the petitioners that the respondent no.5 Gujarat Pollution Control Board has also issued a Show Cause Notice dated 5th October, 2013 to the respondent no.7, Jaypee Cement Ltd., for non-compliance of the norms and the parameters prescribed by the Board.

xvi) According to the petitioners the respondent No.6 Gujarat Anjan Cement Ltd., failed to develop the land between 1997 and 2008 and thereby committed breach of various conditions of the lease agreement as well as other orders on the strength of which the land was granted. It is alleged that thereafter with an oblique motive and with a view to save the transfer fee/ premium and other related issues, the address of the Registered Office of the company was changed. According to the petitioners although the land is situated in Gujarat, allotted

by the Government of Gujarat and most of the shareholders of the company are from Gujarat, yet the Office address was shown as Sector-128, Noida. It is the same address that of the Jayprakash Associates. Thereafter, a Company Petition No.14/2009 was filed in the High Court of Judicature at Allahabad under Section 391 and 394 of the Companies Act, 1957 for amalgamation. According to the petitioners for the purpose of approval of the scheme of amalgamation, notices were published in the Hindustan Times and other daily newspapers published from Delhi, Mumbai, Lucknow, Agra and at various other places in Europe. However, no such notice was published in any daily newspapers within the State of Gujarat. According to the petitioners such a fact reflects on the malafide intentions on the part of the respondent nos.6 and 7.

xvii) It is the case of the petitioners that as no objections were filed, the High Court of Allahabad finally passed the necessary orders permitting the amalgamation.

xviii) According to the petitioners, the State Government, without charging any amount of premium or any transfer fees, permitted the lands to be transferred in the name of Jayprakash Associates vide order dated 12th November, 2009.

xix) According to the petitioners by adopting the same modus operandi the land and the mining lease agreement have been transferred from Jayprakash Associates to respondent no.7 Jaypee Cement Ltd. At that point of time also the Government did not deem fit to recover or charge any transfer fee or premium and permitted the same vide order dated 29th

December, 2012 on the basis of the order of amalgamation passed by the High Court of Allahabad.

xx) According to the petitioners, the respondent no.7 Jaypee Cement Corporation has now decided to transfer the lands and mining lease in favour of the respondent no.8 Ultra Tech Cement Ltd., for total sum of Rs.3,750 crore and the Company Application No.14/2013 in this regard has been filed before the High Court at Allahabad. It is also the case of the petitioners that after the Company Application No.14/2013 was filed in the High Court of Allahabad, a meeting of Unsecured Creditors was convened on 7th December, 2013 at Noida wherein many persons have registered their objections against the demerger as their legal dues have not been paid by the respondent no.7 Jaypee Cement.

In such circumstances referred to above, the petitioners pray that the intervention of this Court is necessary and the reliefs prayed for be granted in public interest.

3. Stance of the Respondent no.7 Jaypee Cement Corpn.:

A) The petition in the nature of a public interest litigation is not a bonafide petition, but has been filed with an oblique motive. As the bonafide of the petitioners is doubtful, the petition deserves to be dismissed on such count alone.

B) The Gujarat Anjan Cement Limited, the respondent no.6, got merged with the Jayprakash Associates Ltd., vide order dated 15th May, 2009 passed by the High Court of Allahabad in

Company Petition No.14/2009 connected with Company application No.3/2009. In the year 2012, the Gujarat Cement Plant of Jayprakash Associates Limited was demerged to Jaypee Cement Corporation Limited, vide order dated 12th April, 2012 passed by the Allahabad High Court in Company Petition No.9/2012 with Company Application no.23/2011. Therefore, the respondent no.6 company does not exist as on today.

C) The contents of the petition indicate that they have been copied from the letter dated 28th July, 2013 which was addressed by one Shri P.C.Gadhvi to the respondent no.7 company. The respondent no.7 company has lodged an FIR dated 8th July, 2013 against Shri P.C. Gadhvi for the offence committed under Sections 146, 147, 341 and 447 of the Indian Penal Code for illegally obstructing the mining work of the respondent no.7 company. This Public Interest Litigation has been filed at the behest of Shri P.C. Gadhvi as a counter blast to the FIR filed against him.

D) The Sarpanch of Baranda Juth Gram Panchayat, Taluka Lakhpat, District Kutchh and the Sarpanch of Chropdimati Juth Gram Panchayat, Taluka Abdasa, District Kutchh, vide letters dated Nil have informed the Collector that Shri P.C.Gadhvi is poisoning and instigating the villagers against the respondent no.7 company and thereby obstructing the mining work of the respondent no.7 company. Shri P.C.Gadhvi has been externed from the area occupied by Sanghi Industries Ltd., as he instigated the workers and raised frivolous issues against the said company due to which Sanghi Industries Limited had to obtain an externment order against Shri P.C.Gadhvi. The aforesaid two letters were received by the Collector, Bhuj-

Kutchh on 10th July, 2013. The petitioner no.2 works with Shri P.C. Gadhvi. The son of petitioner no.1, Sarpanch and Shri P.C. Gadhvi are leaders of one political party in Taluka Panchayat Lakhpat. The PIL is the outcome of the FIR filed against Shri P.C. Gadhvi.

E) Initially, the following lands were allotted to the respondent no.6 company by the Collector, Bhuj-Kutchh.

- 1) 21/11/1997 – 206.65 Ha. For Cement Plant
- 2) 30/12/1997 – 257.31 Ha. For Cement Plant
- 3) 10/7/2000 – 431.88 Ha. For jetty
- 4) 7/7/2006 - 659.00 Ha. Lease for Limestone
- 5) 3/10/2006 - 400.00 Ha. Lease for Laterite
- 6) 19.10.2008- 2831.61 Ha. For Limestone.

The respondent no.7 company is carrying on its mining activities within the area allotted by the Government of Gujarat and no other lands, water bodies, lakes or private lands have been encroached upon by the respondent no.7 company. The respondent no.7 company is in the process of demerging its Sewagram and Wanakbori units with Ultra Tech Cement Ltd. However, this would be subject to obtaining approvals from the appropriate and competent authorities. The demerger between the two companies cannot be the subject matter of a public interest litigation.

F) The Collector, Kutchh has granted the respondent no.6 company 462.96 Hectore of land and not 885 Hectore of land of Vayor, Paddar, Fulay and Kharai villages of Abdasa and Lakhpat Talukas of District Kutchh. The respondent no.7

company has so far complied with all the conditions mentioned in the allotment order dated 21st November, 1997. As on today, all the waterways, check dams and lakes are being maintained by the respondent no.7 company and has also created new ponds. The respondent no.6 has obtained the 'no objection certificate' dated 27/10/1998 from the Gujarat Pollution Control Board. Later, vide letter dated 23/5/2000, the Ministry of Environment and Forests informed the respondent no.6 company regarding the order passed by the Supreme Court dated 16/2/2000 in SLP Civil no.23658 of 1996 (sic 13658 of 1996) restraining the State Government from granting permission to carry on any mining operation or to put up a cement plant within the area of 10 kilometers from the periphery of the old sanctuary without the permission from the Supreme Court. The Supreme Court vide order dated 18th April, 2001 disposed of the I.A. filed by the respondent no.6 in SLP no.13658 of 1996 by allowing the respondent no.6 company to obtain the necessary clearance from the environmental authorities as well as the forest authorities, and other permissions from any other authority required under the law. The Supreme Court further directed the appropriate authorities to consider the application of the respondent no.6 company and decide the same in accordance with law.

G) Pursuant to the said order dated 18th April, 2001 passed by the Apex Court in SLP no. 13658 of 1996, applications were filed before the concerned authorities for the necessary clearances. The Ministry of Environment & Forest granted the environmental clearances on 8th September, 2006 and 24th December, 2007 respectively. The respondent no.7 company within two years from obtaining the environmental clearance

started commissioning its work for the cement plant. Since the respondent no.7 company started the construction work of the cement plant within two years from obtaining clearance from the Ministry of Environment & Forest, it could not be said that the respondent no.7 is in breach of condition no.5 of the said allotment orders issued by the Collector.

H) It is denied that the respondent no.7 company has encroached upon the Survey no.106 of village Kharai which is known as Nibhala lake. The map/drawing dated 8th January, 2013 prepared by the Government Surveyor on instructions from the Collector, Kutchh indicates that there is no encroachment on the Survey No.106. In fact, the Surveyor has stated that the respondent no.7 company is carrying out its mining activities according to the sanctioned plan.

I) The Gujarat Pollution Control Board is regularly monitoring the pollution levels at the site of the respondent no.7 company. Further, the respondent no.7 company is also submitting "Certificate for Sampling and Analysis" and 'Adequacy Certificate of Environmental Management System" to the Gujarat Pollution Control Board.

J) The respondent no.7 company has denied the allegations of having encroached upon the Gauchar Lands and is doing illegal mining activity in the water body and river situated in village Kharai. On 8th January, 2013 the Government Surveyor, on instructions from the Collector, Kutchh certified the land of the respondent no.7 company and also the nearby Gauchar lands. The Surveyor, in the map prepared by him concerning the lands has stated that the respondent no.7 company is

undertaking its mining activities on the land which is granted to them under the lease deed. Further, the Survey No.153 shown as the Gauchar Land is not forming part of the area where the mining activities are undertaken by the respondent no.7 company.

K) The respondent no.7 company has denied the allegations that it has failed to take steps to erect wire fencing all around the land according to the measurement sheet and the terms of the lease deed. The respondent no.7 company has already erected the wire fencing around the land or has placed pillars necessary to indicate the demarcation shown in the plan annexed to the lease deed. The respondent no.7 company has placed pillars and erected fencing wires around the mining pit according to the Regulation 115 of the Metalliferous Mines Regulations, 1961 and Rule 27(g) of the Mineral Concession Rules, 1960.

L) The respondent no.7 company is not required to do backfilling work after excavating the land. According to the Mining Closure Plan, at the end of 37 years, the mines shall be degraded. Therefore, there is no need of backfilling the land. Further, the respondent no.7 company is not into bauxite mining. In fact, they are into mining of limestone. The petitioners have also admitted this fact in the Memo of their petition. The petitioners are relying on the documents which do not pertain to the mining activities undertaken by the respondent no.7 company. Hence, the letter dated 28th May, 2013 produced by the petitioners has nothing to do with the respondent no.7 company or the mining activities undertaken by it.

M) It is denied that the respondent no.7 company has not complied with the conditions of the lease agreements dated 7/7/2006, 6/8/2007 and 6/9/2008. It is denied that the respondent no.7 company is undertaking illegal mining activity. The petitioners have levelled vague and baseless allegations against the respondent no.7 company. The respondent no.7 company has so far not received any communication from the Collector, Kutchh or Industries and Mines Department of Government of Gujarat regarding breach of any of the terms and conditions of the lease agreements.

N) When the DILR approved the maps for the land of the plant no public way or road was shown in the layout plan. There is no public way or road shown in the plant area. However, as a measure of goodwill and for convenience of the villagers the respondent no.7 company has been permitting the villagers to cross through its area with certain restrictions for security reasons, after disclosing their identity, providing their vehicle number and such other information. Moreover, the respondent no.7 company has also constructed a flyover for the convenience of the villagers. In view of the scanty monsoon and as a gesture of goodwill, the respondent no.7 company has allowed the cattle to come and graze within its plant area from time to time as requested by the nearby villagers.

O) The respondent no.6 company had filed applications in the year 2007-2008, before the Industries Commissioner, Government of Gujarat, seeking permission to obtain

additional agricultural land of various survey numbers situated in village Kharai, Fulal -2 and Vayor/Paddhar in District Kutchh for a bona fide industrial purpose of setting up a cement project. For the said purpose, the Industries Commissioner, Government of Gujarat granted permission to the respondent no.6 company on the premise that the agricultural land required for cement project was for a bona fide industrial purpose. Thereafter, the permission was granted by the Deputy Collector vide order dated 18/6/2008. For obtaining the non-agricultural use permission, a lot of documents were required to be submitted to the concerned authority. A lot of time was consumed in obtaining the Village Forms No.6 and 7/12 for the period ranging between 1961 and 2002 as they were in a manual form. The land records were computerized only after the year 2002. Besides, the revenue records were also required to be prepared to get approval of layout plans from the Town Planning Officer, including the title clearance, bank loans etc. It was not in the hands of the Company to obtain such permissions on its own as they had to come from a third party. However, time and again applications were made for extending the time for obtaining the non-agricultural use permission from the Deputy Collector, Nakhatrana and the said period of six months was extended from time to time.

P) In the year 2013, after securing all the necessary documents, an application for non-agricultural use permission was made for the survey numbers mentioned in the order dated 18/6/2008. The Deputy Collector, Kutchh, vide its order dated 16/11/2013, rejected the application for survey Nos.109 and 127 situated in Village Kharai, Taluka Lakhpat. In so far as the order dated 18/6/2008 is concerned, out of 15 survey

numbers, application for only survey no.109 was rejected. The survey No.127 does not form part of the survey numbers mentioned in the order dated 18/6/2008 passed by the Deputy Collector, Nakhatrana. Moreover, the order of the Collector, Kutchh dated 16/11/2013 has been challenged by the company before the Special Secretary, Revenue Department (Appeals). Under the provisions of the Gujarat Land Revenue Code, 1879 and of the Bombay Tenancy and Agricultural Lands (Vidharbha Region and Kutch area) Act, 1958, no permission is required in favour of any person for use of agricultural land for a bona fide industrial purpose. However, by way of precautions, the respondent No.7 company thought fit to obtain a formal permission for conversion of agricultural land into non-agricultural land. Accordingly, applications for grant of non-agricultural use permission were filed. Further, the respondent no.7 company has also paid premium to the tune of Rs.7 crore (approximately) against the demand made by the Collector for converting agricultural land into non-agricultural land.

Q) The respondent no.7 company has responded to the said show cause notice dated 5/10/2013 issued by Gujarat Pollution Control Board and has complied with the necessary norms prescribed by the Board.

R) For approval of the scheme of amalgamation, notices were published in the newspapers as directed by the High Court of Judicature at Allahabad vide its order dated 9th February, 2009 as amended vide order dated 2nd March, 2009 in Company Petition No.14/2009 connected with Company Application no.3 of 2009 and the notices for the scheme of demerger had been published in the newspapers as directed

by the High Court of judicature at Allahabad in its order dated 4th January, 2012 in Company Application no.23 of 2011.

S) Without understanding the merger and demerger scheme and the relevant laws regulating them, the petitioners are shouting for no reason that the respondent no.7 Company has not complied with the relevant laws. Both the amalgamation and demerger schemes were proposed in accordance with the provisions of the Companies Act, 1956 and the rules made thereunder and the said schemes have been approved by the High Court of Judicature at Allahabad as required under the Companies Act, 1956. If the petitioners have any grievance in relation to the approval of the said schemes by the High Court of Judicature at Allahabad, it is open to them to take recourse to the legal remedies available to them before appropriate forum under law. Further, even under the lease agreement there is no such stipulation that in case of merger and demerger of the Company, the transferee would be required to pay any fee or premium.

T) Almost 95% of the shares of the Gujarat Anjan Cement Limited were held by the Jaypee Cement Limited in the year 2006. The Jaypee Cement Limited was a wholly owned subsidiary of the Jayprakash Associates Limited. In the year 2009 Gujarat Anjan Cement Limited with the Jaypee Cement Limited and other two companies got merged into the Jayprakash Associates Limited (vide order dated 15/5/2009 passed by the High Court of Allahabad.) In the year 2012 Gujarat Cement Plants of the Jayprakash Associates Limited was demerged into the Jaypee Cement Corporation Limited, the respondent no.7 company (vide order dated 9/4/2012

passed by the High Court of Allahabad). The respondent no.7 company at the time of the demerger was a wholly owned subsidiary of the Jaiprakash Associates Limited and as on date continues to be a wholly owned subsidiary of the Jaiprakash Associates Limited. The management of the Company has not changed. So the concept of transfer of assets and liabilities between the holding and its subsidiary company is a misnomer and is also exempt from payment of Stamp Duty in view of remission notification dated 16/1/1937. Moreover, section 2(1B) of the Income Tax Act, 1961 defines 'amalgamation'. Even under the Income Tax Act, 1961, the transfer of assets to the transferee company pursuant to a scheme of amalgamation is not a transfer and it does not attract capital gains tax under section 47(vi). There is no bar to more than two companies being amalgamated under one scheme, if it is according to the provisions of law. In the present case also, the merger and demerger has taken place according to the law regulating such schemes.

U) The demerger of part of the respondent no.7 Company's assets in favour of the respondent no.8 Company will be done in accordance with the law applicable to such a demerger. The applications filed under sections 391 and 394 of the Companies Act, 1956 are pending before the High Courts of Allahabad and Bombay. Moreover, under the Competition Act, 2002, the respondent no.8 Company is required to take permission from the Competition commission of India on the issue that the proposed combination between the respondents nos.7 and 8 is not likely to have an adverse effect on competition in India. The Competition Commission of India has approved the proposed combination between the respondent

nos.7 and 8 under sub-section (1) of Section 31 of the Competition Act, 2002, vide its order dated 20th December, 2013. The petitioners have wrongly stated that the respondent no.7 company is transferring the mining lease for Rs.3,750 crore in favour of the respondent no.8 company. In fact the respondent no.7 company is transferring all its assets and liabilities to the respondent no.8 company and consideration amount that the respondent no.7 Company is likely to receive, would not be more than Rs.150 crore, subject to adjustments according to the scheme at the time of closing of the deal and that too only in the form of shares of the respondent no.8 Company.

V) If the petitioners have any problem with the transfer, then they may implead themselves in the proceedings before the concerned authorities. By way of filing a public interest litigation the petitioners cannot stall the transfer of assets from the respondent no.7 Company to the respondent no.8 Company. The transfer fees, if any payable and demanded will be paid.

4. Stance of the Respondent no.2 State of Gujarat:

- (i) By order dated 12th November, 2009 passed by the Industries and Mines Department, State of Gujarat, it was held that according to the Rule-62 of the Mineral Concession Rules,1960, the application/representation of the Company was deliberated upon, and thereafter, it was decided that the name of Jay Prakash Associates Ltd., should be entered in place of M/s. Gujarat Anjan Cement Ltd., in the lease deed and the Collector was

directed to take appropriate steps in that regard according to the order dated 12th November, 2009.

- (ii) Vide order dated 29th October, 2012, passed by the Industries and Mines Department, it was noted that Jay Prakash Associates Ltd., has preferred Company Application No.23 of 2011 before the Allahabad High Court and by virtue of which it got merged in to the Jaypee Cement Corporation Ltd. and therefore, according to Rule-62 of the Mineral Concession Rules, the name of Jay Prakash Associates Limited got replaced by the name of M/s. Jaypee Cement Ltd.

5. Submissions on behalf of the petitioners :

Mr.Mehul Sharad Shah, the learned counsel appearing for the petitioners has submitted that the issues raised in this petition are very important as they affect the legal as well as the fundamental rights of the people residing and carrying-on their agricultural operations adjoining the place where the company is carrying on its operation of manufacturing of cement. Mr. Shah submits that the Government of Gujarat should have acted promptly in this regard to protect the interest of the people.

According to Mr.Shah, the initial permission to set-up the cement plant was granted in favour of the respondent no.6 Gujarat Anjan Cement Ltd. However, the respondent no.6, without commencing with any manufacturing operations, transferred the entire unit in favour of the respondent no.7 by deriving a huge profit out of the same and which amounts to

unjust enrichment at the cost of public exchequer. Mr. Shah submits that now the respondent no.7 also intends to transfer the entire plant in favour of the respondent no.8 Ultra Tech Cement by deriving a huge profit at the cost of public exchequer.

According to Mr.Shah the Court should also consider the issues of encroachment, illegal mining activity, transfer of mining lease, pollution, employment and allotment of land in public interest and pass appropriate orders in that regard.

6. Submissions on behalf of the respondent no.7, Jaypee Cement Limited :

Mr.Dushyant Dave, the learned Senior Advocate assisted by Mr.Anuj Trivedi and Mr.Ankit Shah has vehemently opposed this petition and submits that this petition in the garb of a public interest litigation is not a bonafide petition. According to Mr.Dave, only with an oblique motive and with a view to harass the company, for oblique considerations, the present petition has been filed leveling all sorts of false allegations.

Mr.Dave submits that there cannot be any dispute as regards the proposition that a person engaged in industrial activity is under an obligation to conduct his commercial activities with the highest standard of safety. Mr.Dave submits that his client is taking all possible steps to see that there is no pollution on account of the industrial activities.

Mr.Dave also submitted that the allegations regarding the dubious manner in which the Gujarat Anjan Cement Limited

got merged with the Jay Prakash Associates by virtue of order of amalgamation passed by the High Court of Allahabad are without any basis and far from truth.

Mr.Dave submitted that the allegations that the private agricultural lands were acquired by his client without paying any compensation on the assurance of providing employment in the company are also far from truth and baseless. Mr.Dave submits that his client is always open to giving employment to the villagers in the surrounding areas Mr. Dave further submits that all the necessary permissions like environment clearance, Wild Life clearance have been obtained from the authorities concerned.

In such circumstances referred to above, Mr.Dave prays that there being no merits in this petition the same may be rejected.

7. We have also heard Mr. P.K.Jani, the learned Government Pleader appearing for the State of Gujarat, Mr.Biren Vaishnav, the learned advocate appearing for the respondent no.5 GPCB and Mr. Mihir Joshi, the learned Senior advocate appearing on behalf of the respondent no.8.

8. Having heard the learned counsel appearing for the parties and having gone through the materials on record, the only question that falls for our consideration in this Public Interest Litigation is whether the petitioners are entitled to any of the reliefs prayed for in this petition.

9. Ordinarily, court would allow litigation in public interest if

it is found :

- (i) That the impugned action is violative of any of the rights enshrined in Part III of the Constitution of India or any other legal right and relief is sought for its enforcement;
- (ii) That the action complained of is palpably illegal or mala fide and affects the group of persons who are not in a position to protect their own interest on account of poverty, incapacity or ignorance;
- (iii) That the person or a group of persons were approaching the Court in public interest for redressal of public injury arising from the breach of public duty or from violation of some provision of the Constitutional law;
- (iv) That such person or group of persons is not a busy body or a meddlesome inter-loper and have not approached with mala fide intention of vindicating their personal vengeance or grievance;
- (v) That the process of public interest litigation was not being abused by politicians or other busy bodies for political or unrelated objective. Every default on the part of the State or Public Authority being not justiciable in such litigation;
- (vi) That the litigation initiated in public interest was such that if not remedied or prevented would

weaken the faith of the common man in the institution of the judiciary and the democratic set up of the country;

(vii) That the State action was being tried to be covered under the carpet and intended to be thrown out on technicalities;

(viii) Public interest litigation may be initiated either upon a petition filed or on the basis of a letter or other information received but upon satisfaction that the information laid before the Court was of such a nature which required examination;

(ix) That the person approaching the Court has come with clean hands, clean heart and clean objectives;

That before taking any action in public interest the Court must be satisfied that its forum was not being misused by any unscrupulous litigant, politicians, busy body or persons or groups with *mala fide* objective of either for vindication of their personal grievance or by resorting to black-mailing or considerations extraneous to public interest.

10. Adherence to the principle of sustainable development is now a constitutional requirement. How much damage to the environment and ecology has got to be decided on the facts of each case. While applying the principle of sustainable development one must bear in mind that development which meets the needs of the present without compromising the ability of the future generations to meet their own needs is

sustainable development. Therefore, courts are required to balance development needs with the protection of the environment and ecology. It is the duty of the State under our Constitution to devise and implement a coherent and coordinated programme to meet its obligation of sustainable development based on inter-generational equity.

11. Mining is an important revenue-generating industry. However, one cannot allow our national assets to be placed into the hands of companies without a proper mechanism in place and without ascertaining the credibility of the user agency.

The mining operation is hazardous in nature. It impairs ecology and people's right of natural resources. The entire process of setting up and functioning of mining operation require utmost good faith and honesty on the part of the intending entrepreneur. For carrying on any mining activity close to township which has tendency to degrade environment and are likely to affect air, water and soil and impair the quality of life of inhabitants of the area, there would be greater responsibility on the part of the entrepreneur. The fullest disclosures including the potential for increased burdens on the environment consequent upon possible increase in the quantum and degree of pollution, has to be made at the outset so that public and all those concerned including authorities may decide whether the permission can at all be granted for carrying on mining activity. The regulatory authorities have to act with utmost care in ensuring compliance of safeguards, norms and standards to be observed by such entrepreneurs.

When questioned, the regulatory authorities have to show that the said authorities acted in the manner enjoined upon them. Where the regulatory authorities, either connive or act negligently by not taking prompt action to prevent, avoid or control the damage to environment, natural resources and peoples' life, health and property, the principles of accountability for restoration and compensation have to be applied.

The development and the protection of environments are not enemies. If without degrading the environment or minimising adverse effects thereupon by applying stringent safeguards, it is possible to carry on development activity applying the principles of sustainable development, in that eventuality, the development has to go on because one cannot lose sight of the need for development of industries, irrigation resources and power projects etc. including the need to improve employment opportunities and the generation of revenue. A balance has to be struck. We may note that to stall fast the depletion of forest, series of orders have been passed by the Supreme Court in T. N. Godavarman's case regulating the felling of trees in all the forests in the country. Principle 15 of Rio Conference of 1992 relating to the applicability of precautionary principle which stipulates that where there are threats of serious or irreversible damage, lack of full scientific certainty shall not be used as a reason for proposing effective measures to prevent environmental degradation is also required to be kept in view. In such matters, many a times, the option to be adopted is not very easy or in a strait-jacket. If an activity is allowed to go ahead, there may be irreparable damage to the environment and if it is stopped, there may be

irreparable damage to economic interest. In case of doubt, however, protection of environment would have precedence over the economic interest. Precautionary principle requires anticipatory action to be taken to prevent harm. The harm can be prevented even on a reasonable suspicion. It is not always necessary that there should be direct evidence of harm to the environment. (See *M.C. Mehta Vs. Union of India and ors.*, reported in (2004) 12 SCC 118 and *T.N. Godavarman Thirumulpad Vs. Union of India and ors.* reported in (2008) 2 SCC 222)

12. Bearing in mind the aforesaid principles, we proceed to consider the various issues raised by the petitioners in public interest.

In our opinion, six issues arise for our consideration and those are as under:-

- i) Encroachment over the Gauchar land, water bodies, lakes etc as also the public road.
- ii) The issue of illegal mining activity outside the mining area and failure on the part of the respondent no.7 in not undertaking backfilling work after excavating the land.
- iii) The issue of transfer of mining lease by the respondent no.6 Gujarat Anjan Cement Limited, first to Jay Prakash Associates and subsequently to the respondent no.7.
- iv) The problem of pollution as alleged by the petitioners.

- v) The issue of providing employment to the villagers in the company.
- vi) The issue of allotment of land in wake of the order passed by the Collector rejecting the application filed by the respondent no.7 for use of land for non-agricultural purpose.

12.1 In so far as the first issue regarding encroachment over the Gauchar land, water bodies, lakes etc., as also the public road, the same has been taken care of by us vide our order dated 20th March, 2014. Our order dated 20/3/2014 reads as under:-

"By this Public Interest Litigation, the petitioner initially prayed for the following reliefs :-

"13. The petitioner, therefore, most respectfully prays that Your Lordship may graciously be pleased :-

(A) to issue a writ of mandamus or any other appropriate writ, order or direction, directing the respondents, their agents, servants to remove the encroachment from the Gauchar land, from the Water Bodies and Lakes and from the Public Road and be further pleased to direct the private respondents' companies to identify their land by putting up wire fencing as per agreement before continuing mining activities;

(B) to issue a writ of mandamus or any other appropriate writ, order or direction, restraining the private respondents cement companies not to cause any pollution in the River, Lakes and Water Bodies and the Gauchar land by way of throwing the mining and cement waste into it;

(C) to issue a writ of mandamus or any other appropriate writ, order or direction, directing the respondents to provide employment to the local residents of the village and to the agriculturists whose land were acquired by giving assurance of employment.

(D) pending admission, hearing and final disposal of this petition, Your Lordships may be pleased to restrain the respondent No.7 from transferring the mining lease and the entire land in favour of respondent No.8 till the illegalities are cured and the conditions of lease agreement are complied with by respondent No.7.

(E) pending admission, hearing and final disposal of this petition, Your Lordships may be pleased to direct the respondent No.7 to install the fencing around the land allotted to it for mining purpose and be further pleased to direct respondent No.7 to open the gauchar land, the rivers, lakes and other Water bodies, encroached upon by it immediately.

(F) to pass such other and further orders as may be just and necessary in the interest of justice in favour of the petitioners."

Subsequently, however, the petitioner has amended the application and some new prayers have been added.

The main grievance of the petitioner was that the private respondent being respondent No.7 has encroached gauchar land and water bodies, lake etc. as also the public road.

In the affidavit-in-reply to such application, the State-respondent has specifically supported the claim of the petitioner in respect of prayer 13(A) and the definite assertion of the State-respondent is that out of 15 Survey numbers over which the Respondent has possession, there has been encroachment in respect of 7 survey numbers, details of which have been given in the said affidavit-in-reply filed by the State. Even the extent of encroachment has been asserted in such affidavit after the land being surveyed by the appropriate authority.

Such being the position, in our opinion, it is the duty of the State-respondent to take recourse to the provisions contained in Section 61 or 79A of the Bombay Land Revenue Code or any other law for the time being in force for eviction of the alleged encroacher and in the event of positive finding of encroachment, to ultimately invoke Section 202 of the Bombay Land Revenue Code by way of execution.

If it appears that any amount of land vested in any panchayat authority has been encroached, in that event, it is for the State-respondent to take recourse to section 105 of the Gujarat Panchayats Act.

Mr Dave, the learned Senior Advocate appearing on behalf of the respondent No.7 fairly conceded that his client has no objection to face such proceedings; if initiated, he, however, denies the allegations contained in the affidavit filed by the State-respondent.

In view of the aforesaid affidavit filed by the State-respondent, we direct the State-respondent to take immediate steps in terms of the Bombay Land Revenue Code after complying with the formalities required under the law and to take appropriate steps if it comes to a specific finding that there has been genuine encroachment of the Government land or panchayat land in any manner.

Be that as it may, we direct the State-respondent to take such steps positively within four weeks from today and to come to a definite conclusion as regards the allegation of encroachment. So far the other points involved in this Public Interest Litigation are concerned, we fix this matter on 27th March 2014.

Let a copy of the order be handed over to Mr Baxi, the learned AGP appearing on behalf of the State-respondent for compliance of our direction."

Thus, so far as the allegation of encroachment is concerned, it is now for the State-respondent to place appropriate report regarding the inquiry conducted by the authorities.

12.2 So far as the issue of illegal mining activities is concerned, we find from the materials on record that the respondent no.7 has undertaken the mining activity only on the land certified by the Government Surveyor and according to the instructions of the Collector, Kutchh. It also appears from the record that the company is not required to do any backfilling work after excavation. According to the mining closure plan, the mines shall be degraded at the end of 37 years. It also appears from the materials on record that the Geology Department after conducting the necessary

investigation has found that the excavation was being undertaken within the leased area and no excavation was found to be undertaken on the Gauchar land or around the water bodies.

12.3 So far as the issue of transfer of the mining lease is concerned, it appears from the materials on record that the mergers of the companies have taken place pursuant to the orders dated 15/5/2009 and 12/4/2012 passed by the High Court of Allahabad. Pursuant to the same, the mining lease was transferred in the name of the respondent no.7. We refrain from commenting anything in so far as the amalgamation of the company is concerned including the order passed by the High Court of Allahabad. We may only say that the Registered Offices of the Company were in U.P. and accordingly the amalgamation petitions were filed in the High Court of Allahabad. It also appears from the materials on record that the necessary permission from SEBI, Stock Exchange and CCI were also obtained.

12.4 So far as the issue of pollution is concerned, it appears that the GPCB has been regularly monitoring the activities of the respondent no.7. The certificates of Sampling Analysis and Adequacy Certificate of Environmental Management System are being submitted on yearly basis. The No Objection Certificate and consent to operate the plant has been granted and renewed by the Gujarat Pollution Control Board till 2014. It also appears that the Supreme Court vide order dated 18/4/2001 passed in Special Leave to Appeal (Civil) No.13658/1996 i.e.5-6, has permitted the company to obtain the necessary clearances from the authorities. It also

appears from the materials on record that the Environmental Clearance has been granted by the Ministry of Environment and Forest for the cement plant, Captive Jetty and Lime Stone mining. The Wild Life Clearance Certificate has also been granted by the Chief Surveyor of Forest. It also appears that the Show Cause Notice which was issued by the GPCB was for non-submission of the compliance report which, according to the respondent no.7 has been submitted and has been once again submitted on receipt of the Show Cause Notice. It also appears that the Geology Department has issued the Account Number to submit e-royalty for the purpose of mining operations.

12.5 So far as the issue of employment is concerned, it appears from the materials on record that the respondent no.7 has employed 27 local residents as permanent employees and has regularly paid them their salaries. However, Mr. Dushyant Dave, the learned Senior Advocate appearing on behalf of the respondent no.7 has very fairly submitted that his client is always open to giving employment to the villagers in the surrounding areas and the company shall also see to it that the contractors engage the villagers as unskilled labourers on regular basis. Mr.Dave submits that the individuals whose employment agreements have been relied upon by the petitioners have been provided with permanent employment.

12.6 So far as the issue of allotment of land is concerned, it appears that the Collector rejected the application of the respondent no.7 vide order dated 16/11/2013. However, an appeal has been preferred by the respondent no.7 before the Special Secretary, Revenue Department (Appeals) State of

Gujarat. It also appears that the companies were granted permission by the Industries Commissioner for the bonafide industrial purpose vide orders dated 29/5/2007 and 5/5/2008 respectively for purchasing additional agricultural land. It is not in dispute that the respondent no.7 has paid a premium to the tune of Rs.7 crore against the demand of the Collector for converting the agricultural land into non-agricultural land.

13. Mr.Shah, the learned counsel appearing for the petitioners, has expressed serious concern regarding the transfer of the Cement plant by the respondent no.7 company in favour of the respondent no.8 company. According to Mr.Shah the respondent no.7 company intends to transfer the entire mining lease in favour of the respondent no.8 for a total sum of Rs.3,750 crore. In this regard we may only say that the demerger on the part of respondent no.7 company's assets in favour of the respondent no.8 company shall be strictly in accordance with law.

14. In view of the above, we dispose of this public interest litigation by issuing the following directions:-

- i) Pursuant to our order dated 20th March, 2014, if it has been found by the State-respondent on completion of the inquiry that the company has encroached upon the gauchar land, water bodies, lakes etc. as also the public road, then in such circumstances, the State- respondent shall take appropriate steps to see that the encroachment is immediately cleared.

- ii) The Gujarat Pollution Control Board shall regularly monitor the activities of the respondent no.7 company preferably, every two months, and if it is found that the company is not complying with the norms and the parameters fixed by the Board, then in such circumstances, the GPCB shall take appropriate steps in that regard. At the same time the respondent nos.7 & 8 shall also produce the necessary certificates of Sampling Analysis and the Adequacy Certificate of Environmental Management systems before the GPCB on regular basis.

- (iii) The user agency should undertake comprehensive study on hydrogeology of the area and the impact of mining on the surrounding water quality and stream flow at regular interval and take effective measures so as to maintain the pre-mining water condition as far as possible.

- iv) The respondent no.7 may see to it that as far as possible, employment is given to the villagers from the surrounding areas in the company, if any vacant posts are available and the contractors should also be asked to engage the villagers as unskilled labourers.

With the above observations and directions we close this Public Interest Litigation. Let this matter appear after two

weeks only for the purpose of reporting compliance of our order dated 20th March, 2014 regarding the inquiry as regards the allegations of encroachment over Gauchar Land, Water bodies, lakes etc., as also the public road.

(BHASKAR BHATTACHARYA, CJ.)

(J.B.PARDIWALA, J.)

Mohandas