A JANAK LAL

v.

STATE OF MAHARASHTRA & ORS.

AUGUST 10, 1989

B [LALIT MOHAN SHARMA AND J.S. VERMA, JJ.]

Mineral Concession Rules, 1960: Rules 58 & 59—Reserved land granted for mining without public notification—Validity of.

Words and Phrases: 'reserved for any purpose'—Meaning of—
C *Mineral Concession Rules, 1960, Rule 59.*

Rule 58 of the Mineral Concession Rules, 1960, which deals with availability of areas for regrant of a mining lease, requires a notification to be published in the offical gazette at least 30 days in advance. Rule 59 directs the procedure laid down in Rule 58 to be followed in the
D **case of any land in respect of which the State Government had refused to grant a prospecting licence or a mining lease on the ground that it was required to be reserved for any purpose. The expression "reserved for any purpose" was earlier followed by the words "other than prospecting or mining for minerals", which was omitted by an amendment in 1963.**

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An application for grant of mining lease in respect of the disputed area had been rejected earlier on the ground that it was reserved for some other purpose. Subsequently, however, a mining lease in regard to the said area was granted in favour of respondent No. 4. The appel-
F **lant challenged the allotment on the ground that the procedure for settlement as laid down in Rule 59 read with Rule 58 was not followed before the grant. The High Court dismissed that application on the ground that Rule 59 was confined to cases where earlier reservation was made for mining purposes.**

Allowing the appeal,

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HELD: 1. The grant of mining lease in favour of respondent No. 4 was illegally made in violation of Rule 58 of the Mineral Concession Rules, 1960. [833E-F]

2.1 Rule 59 covered the instant case. Earlier the only category
H **which was excluded from the application of this Rule was prospecting**

or mining leases. The effect of the 1963 amendment is that by omitting the words "other than prospecting or mining for minerals", prospecting and mining leases have also been placed in the same position as the other cases. The other cases to which the Rule applied earlier have not thus been excluded. [833E-B]

2.2 It is clearly in the public interest to notify the proposal to grant a mining lease. The State and its authorities will, in that case, have the choice of selecting the most suitable person by following the just and equitable criteria laid down by the Rules. [833D]

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 3255 of 1989.

From the Judgment and Order dated 29.7.1985 of the Bombay High Court in W.P. No. 2137 of 1979.

V.A. Bobde, S.D. Mudaliar and A.G. Ratnaparkhi for the Appellant.

S.K. Dholakia, A.S. Bhasme and A.M. Khanwilkar for the Respondents.

For the Respondent No. 4-in person (not present).

The Judgment of the Court was delivered by

SHARMA, J. Notice for final disposal of the case was served on the respondents. Heard the learned counsel for the parties. Special leave is granted.

2. This case is dependent on the correct meaning and scope of Rule 59 of the Mineral Concession Rules, 1960 (hereinafter referred to as the Rules). A certain area in village Bazargaon, District Nagpur was reserved for Nistar purposes (that is, for grazing of cattle etc.). The respondent No. 4 applied for grant of a mining lease in regard to the said area which was allowed. The appellant, who is a local resident, challenged the allotment on the ground that the procedure for settlement as laid down in Rule 59 read with Rule 58 was not followed before the grant.

3. Rule 58 deals with availability of areas for re-grant of a mining lease and requires an entry to that effect to be made in a

register referred to in Rule 21(2) of the Rules, and a notification to be published in the official gazette at least 30 days in advance. The purpose obviously is to enable the members of general public to apply for the proposed lease. Rule 59 directs the procedure in Rule 58 to be followed in the cases mentioned thereunder in the following terms:

> "59. Availability of certain areas for grant to be notified—In the case of any land which is otherwise available for the grant of a prospecting licence or a mining lease but in respect of which the State Government has refused to grant a prospecting licence or a mining lease on the ground that the land should be reserved for any purpose, the State Government shall, as soon as such land becomes again available for the grant of a prospecting licence or mining lease, grant the licence or lease after following the procedure laid down in rule 58."

The appellant contends that as the prescribed procedure had not been followed, the grant in favour of the respondent No. 4 is illegal and fit to be set aside.

4. Admittedly the disputed area was reserved for Nistar purposes and when an application for grant of mining lease was earlier made by a third party it was rejected on the ground that it was so reserved. Further, there is no dispute that before the impugned grant was made in favour of the respondent No. 4 the procedure prescribed by Rule 58 was not followed, and no opportunity was given to any other person before entertaining the request of the respondent No. 4. The question in this background is whether Rule 59 is attracted to the case.

5. The appellant's application under Article 226 of the Constitution was dismissed by the Bombay High Court on the ground that Rule 59 was confined to cases where earlier reservation was made for mining purposes. The stand of the respondents that the expression "reserved for any purpose" in rule 59 does not cover a case where the area was reserved for Nistar purposes or for any purpose other than that of mining was accepted.

6. Earlier the expression "reserved for any purpose" was followed by the words "other than prospecting or mining for minerals", which were omitted by an amendment in 1963. Mr. Dholakia, learned counsel for the respondents, appearing in support of the

impugned judgment, has contended that as a result of this amendment the expression must now be confined to cases of prospecting or mining for minerals and all other cases where the earlier reservation was for agricultural, industrial or any other purpose must be excluded from the scope of the rule. We are not pursuaded to accept the suggested interpretation. Earlier the only category which was excluded from the application of Rule 59 was prospecting or mining leases and the effect of the amendment is that by omitting this exception, prospecting and mining leases are also placed in the same position as the other cases. We do not see any reason as to why by including in the rule prospecting and mining leases, the other cases to which it applied earlier would get excluded. The result of the amendment is to extend the rule and not to curtail its area of operation. The words "any purpose" is of wide connotation and there is no reason to restrict its meaning.

7. We do not see any ground for limiting the scope of the rule so as to deprive the members of general public to approach the State with competitive terms. It is clearly in the public interest to notify the proposal to grant a mining lease, so that the best deserving person may have a chance to be considered. The State and its authorities will, in that case, have the choice of selecting the most suitable person by following the just and equitable criteria laid down by the Rules. If, on the other hand, the rule is construed as suggested by the respondents, a resourceful applicant can succeed in striking an un-deserved bargain to the prejudice of the public interest.

8. We are, therefore, of the view that Rule 59 covered the present case and the grant in favour of the respondent No. 4 was illegally made in violation of Rule 58. Accordingly, the appeal is allowed, the judgment of the High Court is set aside and the decision to grant the mining lease in question to the respondent No. 4 is quashed. The State Government may now issue a notification and take other steps in accordance with law before proceeding further. There will be no order as to costs.

P.S.S. Appeal allowed.