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2026 INSC 1244

REPORTABLE

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 8294 OF 2026

BIBOL TOPPO & ORS. ...APPELLANT(S)

VERSUS

STATE OF ODISHA & ORS. ...RESPONDENT(S)

J U D G M E N T

SATISH CHANDRA SHARMA, J.

1. The present appeal takes exception to the decision dated 06.09.2024 of the High Court of Orissa at Cuttack passed in Writ Petition (C) No. 31638/2022[1], whereby the writ petition preferred by the appellants was dismissed by the High Court. The appellants had challenged the acquisition of certain lands by the State of Odisha for the purpose of mining by M/s. Dalmia Cements Bharat Limited.

[1] Hereinafter referred as "impugned judgment"

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THE CASE

2. The appellants are residents of three villages, namely Kukuda, Bihabandha and Lanjiberna falling in Sundergarh District of the State of Odisha. They are aggrieved by the land acquisition proceedings commenced by the respondent State at the instance of respondent no. 7, M/s Dalmia Cements Bharat Limited[2]. As per the admitted position, the State Government had granted a mining lease to the company for conducting mining operations over an area of 893.55 Ha. The lease was extended from time to time. Lastly, on 27.06.2016, the lease period was extended till 29.02.2040. After surrender of 20.493 Ha by the company, the total leased area was modified to 873.057 Ha. Out of this area, mining operations were ongoing over an area of 335.96 Ha. In 2015, the company became desirous of carrying out mining operation over the remaining area of 273.57 Ha. This area comprised of land parcels falling in the three villages, named above. The company already had mining rights over the area, however, it also needed surface rights over the land to conduct mining activity and for this, acquisition of land was desired.

3. Accordingly, on 09.12.2015, the company submitted three proposals to the State Government vide Form A under Section 2(1) of the Right to Fair Compensation and

[2] Hereinafter referred as "the company"

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Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013[3], thereby requesting for acquisition of surface rights over 273.57 acres of agricultural land for the mining project. On 23.08.2017, the State Government accorded its administrative approval to the proposal under Rule 3 of Odisha Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Rules, 2016[4], subject to condition that prior consent provisions under Section 2(2)(b)(i) of the 2013 Act shall be applicable.

4. On 06.11.2017, a notification under Rule 8 of Odisha Rules was issued by the State for the commencement of consultation and Social Impact Assessment Study. On 18.09.2019, ADM, Sundergarh issued a letter to Block Development officer regarding the requirement of prior consent of Gram Sabha for the proposed acquisition as per Section 41(3) of 2013 Act. On 06.01.2020, the Sub-Collector, Sadar, Sundergarh addressed a letter to Sarpanch of concerned Gram Panchayats of Kukuda and Katang villages to include the agenda of proposed acquisition for the meeting on 26.01.2020. In the said meeting, unanimous resolutions were passed by the concerned Gram Panchayats rejecting the proposal. On 04.02.2020 and 06.02.2020, the proceedings of respective Gram

[3] Hereinafter referred as "the 2013 Act" or "the Act"
[4] Hereinafter referred as "Odisha Rules"

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Panchayats were forwarded to the concerned Sub-Collector through the Block Development Officers.

5. On 24.02.2020, the State issued a fresh notification under Section 4(1) of 2013 Act read with Rule 8 of Odisha Rules expressing its intention to acquire the subject land and to conduct Social Impact Assessment for the same. This notification was issued in view of the lapse of six months after the first notification. On 03.03.2020, the Collector, Sundergarh called upon the concerned Tehsildar to update the record of rights of the subject land within fortnight.

6. On 18.03.2021, a notification under Section 5 of the Act came to be issued by the Collector notifying a schedule for holding public hearing on the draft SIA. The scheduled meetings in the three affected villages were proposed on 16.04.2021. However, on 13.04.2021, Kukuda and Katang Gram Panchayats informed the Collector and Block Development Officers that due to Covid-19, public hearing could not be conducted. As per the RTI responses furnished by both the Gram Panchayats, no public meeting or hearing could be conducted on the proposed date i.e. 16.04.2021.

7. On 01.06.2021, final SIA report came to be submitted by the Nabakrushna Choudhary Centre for Development Studies (NCDS), Bhubaneswar to the Collector for evaluation by the

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Expert Group. The Expert Group conveyed its report to the Collector on 08.06.2021.

8. On 22.06.2021, a declaration was prepared under Section 8(2) of the Act regarding the acquisition of the subject land on the basis of the expert group and the Collector's report. It was served on the Panchayat Executive Officer of the concerned Gram Panchayats on 24.06.2021. Subsequently, on 06.07.2021l, three preliminary notifications were issued under Section 11 of the Act in respect of the lands situated in the above-named three villages. The appellants filed objections to these notifications.

9. Thereafter, some villagers including the appellants herein preferred Writ Petition (C) No. 23979/2021 before the High Court to challenge the final SIA report, declaration under Section 8(2) and notification under Section 11(1) of the Act. It was disposed of as withdrawn with liberty to file objections before the appropriate authority. Another Writ Petition (C) No. 25730/2021 filed by the villagers was also disposed of in a similar manner. Pursuant to the liberty, the appellants filed their objections on 18.10.2021. On 22.10.2021, the Collector rejected all the objections and recommended issuance of a notification under Section 19 of the Act for the acquisition of the subject land. The said notification was promptly issued on 03.11.2021.

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10. In December, 2021 and January, 2022, unnamed notices under Section 30(2) of the Act were issued to the recorded owners.

11. In the aftermath of these events, the appellants preferred Writ Petition (C) No. 31638/2022 before the High Court, thereby challenging the land acquisition proceedings and notifications issued under Sections 11 and 19 of the Act. The said petition came to be dismissed by the impugned judgment. Hence, the present challenge.

VIEW OF THE HIGH COURT

12. The High Court firstly held that the appellants do not possess the requisite locus standi to challenge the acquisition process for failing to establish any link with the land in question and for failing to adhere to the procedure meant for filing a writ petition in a representative capacity. It further held that the company was entitled to get the surface rights over the land in question in view of the mining rights in its favour, as conferred by the pre-existing lease deed. Addressing the interplay of statutory provisions, the High Court held that the land acquisition proceedings are only complementary in nature to effectuate the grant of mining rights as per the lease. It further held that the provisions of 2013 Act shall prevail over the

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Mines and Minerals (Development & Regulation) Act, 1957[5] only in the matter of grant of compensation as the provisions of 2013 Act are more beneficial in that regard.

13. As regards the requirement of prior consent of the landowners, the Court held that the said requirement did not apply to the subject acquisition as it was an acquisition by the State, as the State was being clothed with the right, title or interest in the land. Thus, the Court held that the provisions of Section 2(2)(b) of 2013 Act shall not apply. The Court further held that the invocation of the said provision in the order granting administrative approval of the State was a case of misquoting. The Court further held that even if the requirement of obtaining prior consent of 80% land owners was applicable, the process of taking consent ought to be a continuing process which takes place through the various stages of the acquisition proceedings. On the basis of this position, the Court acknowledged that as on 22.01.2024, total 535 affected persons have given their consent in Form J as per Odisha Rules, which satisfies the legal requirement.

14. The High Court also found fault with the appellants' failure in not challenging the Collector's report wherein the challenge raised by the appellants was rejected by him.

[5] Hereinafter referred as "MMDR Act"

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15. Procedurally, the High Court invoked the "*doctrine of compliance*" to hold that undue hardship must be avoided and inconsequential aspects cannot be described as the essence of the legal procedure. As regards the consent of Gram Sabha under Section 41 of 2013 Act, the Court placed reliance on the words "*as far as possible*" and "*demonstrable last resort*" to hold that the requirement of prior consent cannot be read as a mandatory requirement in law. It also noted that the statute does not provide for any consequence for non-compliance of Section 41.

16. As regards the composition of the Expert Group, the Court held that the list contemplated in Section 7(2) of 2013 Act is not exhaustive and is only illustrative. Thus, such Group may very well include other members having technical expertise including a member having connection with the project proponent.

17. In view of this reasoning, the High Court found that the respondents have substantially complied with the procedural requirements of land acquisition and the challenge is without any merit.

CHALLENGE BEFORE THIS COURT

18. Taking exception to the impugned judgment, the appellants have advanced the following broad submissions:

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i. The land in question falls in a scheduled area as per Fifth Schedule of the Constitution of India, 1950[6] and it could not be acquired without prior consent of the Gram Sabha as per Section 41 of 2013 Act read with Rule 41 of Odisha Rules;

ii. The provisions of prior consent are mandatory and not directory;

iii. The acquisition in question is acquisition of land by a private company for public purpose and the same is covered by Section 2(2)(b)(i) of the Act. Thus, prior consent of at-least 80% of the affected families is mandatory in accordance with Rule 21 and after updating the Record of Rights as per Rule 20 of Odisha Rules;

iv. Social Impact Assessment has not been conducted in accordance with the applicable provisions as no public hearing was conducted; prior consent of individual land owners was not obtained; and no development plan was prepared;

v. SIA team included a member having connection or financial interest with the requiring body which was impermissible;

[6] Hereinafter referred as "the Constitution"

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vi. Despite MMDR Act, the 2013 Act would fully govern the acquisition in question and would not be limited to the determination of compensation as MMDR Act was not a part of the statutes notified in the 4th Schedule of the 2013 Act.

19. The present appeal has been opposed by respondent nos. 1 to 5 on the following grounds:

i. The appellants lack locus standi to present the instant challenge as they are not the landowners and have failed to bring requisite material to show any authorization or connection with the landowners;

ii. The appellants have urged that they are connected with the recorded tenants of the land in question, however, they have failed to produce any documents to prove the said relationship. Further, only appellant no. 6 has been mentioned as a recorded tenant in the record of rights produced by the appellants before the Court;

iii. Only five out of 12 appellants had filed formal objections under Section 15 of the 2013 Act and thus, they have approached the Court to frustrate the process due to vested interests;

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iv. The mining lease is a contractual arrangement between the State and the company, and the appellants have no privity with the same;

v. The rights of the company to conduct mining operation on the subject land stand crystallized in view of Section 24A(1) of MMDR Act and the landowners are only supposed to be compensated for any loss or damage that the operations may cause;

vi. In lieu of the conferment of mining rights to the company, it is entitled to obtain rights over the surface of the land by paying compensation to the occupiers. Reliance has been placed upon Rule 52 of Minerals (Other than Atomic and Hydro Carbons Energy Minerals) Concession Rules, 2016[7];

vii. The reference to 2013 Act is justified only to govern the aspect of compensation payable to the occupiers of the land qua which mining rights have been conferred by the State;

viii. The State Government was compelled to invoke the 2013 Act for the computation of compensation as it was necessary to discharge the State's obligation under the mining lease;

[7] Hereinafter referred as "MCR Rules"

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ix. Public hearing on the draft SIA was duly conducted on 16.04.2021 as per schedule in the presence of concerned Sub Collector, Tehsildar and BDO;

x. SIA report duly records that no alternate site was feasible; the project caused no displacement; land sought to be acquired was marginal in comparison with the total cultivable land in the area; no person was going to lose residential house; and most of the people from affected villages did not oppose the acquisition since proper compensation was awarded;

xi. The acquisition of land was done by the State Government for a public purpose and therefore, the acquisition was strictly governed by Section 2(1)(b)(iii) and not by Section 2(2)(b) of the 2013 Act;

xii. 448 affected persons gave their consent for the land acquisition in question;

xiii. The requirement of taking consent of the affected persons is a continuing process and arises after the preliminary notification under Section 11 of 2013 Act as land records are updated after the said notification as per Rule 20 of Odisha Rules. It is added that the requirement of obtaining prior consent does not arise after the issuance of notification under Section 8(1) of the Act;

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xiv. The affected villagers of the concerned villages attended the public hearing scheduled on 16.04.2021, however, videography of their concerns could not be conducted due to nuisance and non-cooperation by people. Further, SIA report has noted that most of the villagers are agreeable to the acquisition on payment of adequate compensation;

xv. As regards the non-compliance of Section 41(3) of 2013 Act, the requirement of prior consent of Gram Sabha must be given an interpretation which does not frustrate the land acquisition proceedings. Minor and inconsequential non-compliances may not be instrumental in the decision of the Court;

xvi. Any compliance could be said to be mandatory only if it renders the entire proceeding as invalid and not otherwise;

xvii. As per the provisions of Panchayat Extension to Scheduled Areas Act, 1996[8], the mandatory requirement of obtaining the prior recommendation of Gram Panchayat for grant of mining lease applies only for minor minerals and not for major minerals, as done in the instant case.

[8] Hereinafter referred as "PESA Act"

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20. The submissions advanced on behalf of the company can be encapsulated as follows:

i. The appellants have no locus standi to bring any challenge against the land acquisition proceedings as they are neither the landowners nor connected to the tenants/landowners as per the record of rights;

ii. The appellants filed the petition in representative capacity without complying with the requirements of Order I Rule 8 of Code of Civil Procedure, 1908[9];

iii. MMDR Act is a complete code insofar as the regulation of mining and mineral development is concerned;

iv. The mining operations are to be carried out as per the terms and conditions of mining lease granted as per MMDR Act, and 2013 Act must be read along with MMDR Act;

v. MMDR Act not only provides for the grant of mining lease or the terms and conditions of such lease, but also provides for a situation wherein surface rights over the leased land vest in private occupiers;

vi. Section 24A(1) of MMDR Act confers statutory right upon the lessee of a mining lease to enter upon the

[9] Hereinafter referred as "CPC"

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subject land at all times during the operation of lease and to carry out mining operations. It is added that consent of occupier is required only while affecting entry into the occupier's building, court or garden;

vii. Section 24(2) provides for payment of compensation to the occupier of surface rights for any loss or damage likely to arise during mining operations;

viii. Section 103 of 2013 Act provides that the Act shall be in addition to and not in derogation of any other law for the time being in force and thus, the provisions of MMDR Act cannot be whittled down in any manner by invoking 2013 Act;

ix. The acquisition of land containing mines and minerals shall be governed by Land Acquisition (Mines) Act, 1885 which forms part of the list of enactments placed in Schedule IV of the 2013 Act;

x. The provisions of 2013 Act shall apply with less vigour in the present case because the appellants do not have any right to the minerals underneath the surface and they merely enjoy surface rights, if any, over the land;

xi. In the documents of acquisition, there are some incorrect references to the provisions of 2013 Act. However, mere mentioning of incorrect provisions

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does not affect the correct application of law and the power of acquisition can be traced to the correct provisions;

xii. When the existence of source of power is not in dispute and the source is traceable to multiple provisions, the exercise of such power does not get vitiated solely because of the omission to include some applicable provisions or invocation of incorrect provisions;

xiii. The grant of mining rights does not result in transfer of title over the leased land and ultimately, it is the State which acquires ownership over the land. Thus, the acquisition shall be governed by Section 2(1)(b)(iii) and not by Section 2(2)(b) of 2013 Act;

xiv. The provisions of Section 41(3) of 2013 Act are merely directory and not mandatory, as the Gram Sabha cannot be a body to override the consent of the land owners.

DISCUSSION

21. Having understood the challenge before us, we may now proceed to adjudicate the seminal issue whether the acquisition of subject land by the State is legally sustainable or not.

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22. The admitted factual position suggests that the company has pre-existing mining rights over the subject land by way of a lease granted by the State in accordance with MMDR Act. The rights pertain to an expansive land parcel of which the land in question also forms a part. Although, the company had pre-existing mining rights in its favour, no mining activity was being carried out over the subject land as it did not have proprietary rights over the surface of the land. The surface rights continued to vest in the landowners. In order to acquire the surface rights, a proposal for acquisition of land was initiated by the company. After granting administrative approval to the proposal, the State commenced the process for the acquisition of land. The first issue that arises here is regarding the precise provision of Section 2 of 2013 Act which would govern the acquisition in question. The determination of the provision is important as the applicable procedure is directly contingent upon the nature of acquisition.

23. Section 2 provides for the application clause of the Act and relevant part thereof reads thus:

> ***"2. Application of Act.-*** *(1) The provisions of this Act relating to land acquisition, compensation, rehabilitation and resettlement, shall apply,* ***when the appropriate Government acquires land for its own use, hold and control, including for Public Sector Undertakings and for public purpose****, and shall include the following purposes, namely:—*

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(a) for strategic purposes relating to naval, military, air force, and armed forces of the Union, including central paramilitary forces or any work vital to national security or defence of India or State police, safety of the people; or
(b) for infrastructure projects, which includes the following, namely:—
(i) all activities or items listed in the notification of the Government of India in the Department of Economic Affairs (Infrastructure Section) number 13/6/2009-INF, dated the 27th March, 2012, excluding private hospitals, private educational institutions and private hotels;
(ii) projects involving agro-processing, supply of inputs to agriculture, warehousing, cold storage facilities, marketing infrastructure for agriculture and allied activities such as dairy, fisheries, and meat processing, set up or owned by the appropriate Government or by a farmers' cooperative or by an institution set up under a statute;
(iii) project for industrial corridors or mining activities, national investment and manufacturing zones, as designated in the National Manufacturing Policy;
(iv) project for water harvesting and water conservation structures, sanitation;
(v) project for Government administered, Government aided educational and research schemes or institutions;
(vi) project for sports, health care, tourism, transportation or space programme;
(vii) any infrastructure facility as may be notified in this regard by the Central Government and after tabling of such notification in Parliament;
(c) project for project affected families;

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(d) project for housing for such income groups, as may be specified from time to time by the appropriate Government;

(e) project for planned development or the improvement of village sites or any site in the urban areas or provision of land for residential purposes for the weaker sections in rural and urban areas;

(f) project for residential purposes to the poor or landless or to persons residing in areas affected by natural calamities, or to persons displaced or affected by reason of the implementation of any scheme undertaken by the Government, any local authority or a corporation owned or controlled by the State.

(2) The provisions of this Act relating to land acquisition, consent, compensation, rehabilitation and resettlement, shall also apply, when the appropriate Government acquires land for the following purposes, namely:—

(a) for public private partnership projects, where the ownership of the land continues to vest with the Government, for public purpose as defined in sub-section (1);

(b) for private companies for public purpose, as defined in sub-section (1):

Provided that in the case of acquisition for— (i) private companies, the prior consent of at least eighty per cent of those affected families, as defined in sub-clauses (i) and (v) of clause (c) of section 3; *and (ii) public private partnership projects, the prior consent of at least seventy per cent of those affected families, as defined in sub-clauses (i) and (v) of clause (c) of section 3, shall be obtained through a process as may be prescribed by the appropriate Government:*

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> ***Provided further that the process of obtaining the consent shall be carried out along with the Social Impact Assessment study referred to in section 4:*** *Provided also that no land shall be transferred by way of acquisition, in the Scheduled Areas in contravention of any law (including any order or judgment of a court which has become final) relating to land transfer, prevailing in such Scheduled Areas…."*

24. A reading of sub-section (1) of Section 2 clearly indicates that it applies when the government acquires land for "*its own use, hold and control*" and for public purposes specified in the provision. Sub-section (2), on the other hand, applies when the government acquires land for private companies for public purpose. The public purpose is traceable from the list of purposes specified in sub-section (1). For the present case, suffice to note that a project for mining activity falls in the category of public purposes.

25. A careful examination of the facts makes it evident that the acquisition in question was not meant for the "*use*" of the State. The State has, at no point, proposed to carry out any activity on the subject land. It was also not meant to be held or controlled by the State as the land was exclusively leased to the company for conducting mining activity till 2040. The respondents have not made any claim to the effect that the subject land was to be held or controlled by the State in any

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manner after its acquisition. In fact, it has been unequivocally stated by the respondents that the company was enjoying uninterrupted mining rights in the said area since independence. The lease in its favour has been extended from time to time and thus, there is no indicator of any present or future control of the State over the acquired land.

26. The submission that the land would return to the State after the expiry of mining lease in 2040 is liable to be rejected. It is not only contrary to the fact that the mining lease has invariably been renewed by the State from time to time, but is also irrelevant to the present enquiry. It is so because the nature of acquisition needs to be determined on the strength of the dominant purpose as on date. It cannot be determined on the speculative consideration that the existing purpose as on date may get altered after 2040. To allow this would actually enable the project proponents to bypass and dilute the provisions of the statute. The second submission that the proprietary rights over the acquired land shall vest in the State and not in the company, is also liable to be rejected. For, it has no bearing in identifying whether sub-section (1) or (2) would apply to a given case. Both in sub-section (1) and (2), it is the appropriate government which acquires the land. The words "*when the appropriate Government acquires land*" are present in both the provisions and thus, the enquiry does not turn on this aspect. The

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determining factor is the purpose for which land is proposed to be acquired – *whether for own use of the State or for a private entity*.

27. Once the purpose is examined in the instant case, it is evident that the acquisition was made at the instance of and for the exclusive purpose of mining by respondent no. 7 – a private company. In certain situations, it may be possible that the purpose of acquisition may be traceable to both the sub-sections. In such cases, the Court must try to find out the dominant purpose by taking into account the facts of the case and the jurisprudential essence of the legislation. Be that as it may, no question of overlapping arises in this case as the subject acquisition is clearly covered by Section 2(2)(b) of the Act.

28. The legislative scheme of Section 2(2)(b) suggests that enhanced public participation is envisaged when the land is sought to be acquired by the government for a private company engaged in a public purpose. The *proviso* to Section 2(2)(b) lays down that when the land is sought to be acquired for a private company, prior consent of at least 80% of the affected families shall be obtained. The second *proviso* lays down that the process for obtaining such prior consent shall be carried out along with the SIA study contemplated in Section 4 of the Act.

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29. Therefore, a straightforward examination of the Act makes it clear that the subject acquisition not only required the prior consent of at least 80% of the affected families, but also that such consent was to be obtained *along with* the SIA study. Thus, the legislature has not only laid down the requirement of obtaining prior consent, but has also laid down the stage at which such consent is to be obtained. The stage for obtaining prior consent of affected families is further fortified by Section 8 of the Act which reads as follows:

> *"**8. Examination of proposals for land acquisition and Social Impact Assessment report by appropriate Government.—** (1) The appropriate Government shall ensure that—*
> *(a) there is a legitimate and bona fide public purpose for the proposed acquisition which necessitates the acquisition of the land identified;*
> *(b) the potential benefits and the public purpose referred to in clause (a) shall outweigh the social costs and adverse social impact as determined by the Social Impact Assessment that has been carried out;*
> *(c) only the minimum area of land required for the project is proposed to be acquired;*
> *(d) there is no unutilised land which has been previously acquired in the area;*
> *(e) the land, if any, acquired earlier and remained unutilised, is used for such public purpose and make recommendations in respect thereof.*
> *(2) The appropriate Government shall examine the report of the Collector, if any, and the report of the Expert Group on the Social Impact Assessment study and after considering all the reports,*

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> *recommend such area for acquisition which would ensure minimum displacement of people, minimum disturbance to the infrastructure, ecology and minimum adverse impact on the individuals affected.*
> *(3) The decision of the appropriate Government shall be made available in the local language to the Panchayat, Municipality or Municipal Corporation, as the case may be, and the offices of the*
> *District Collector, the Sub-Divisional Magistrate and the Tehsil, and shall be published in the affected areas, in such manner as may be prescribed, and uploaded on the website of the appropriate Government:*
> ***Provided that where land is sought to be acquired for the purposes as specified in sub-section (2) of section 2, the appropriate Government shall also ascertain as to whether the prior consent of the affected families as required under the proviso to sub-section (2) of section 2, has been obtained in the manner as may be prescribed.****"*
> *(emphasis supplied)*

30. Section 8 provides for the examination of a proposal for land acquisition by the appropriate government. It contemplates the stage at which the government applies its mind to the material available before it. Such material includes the report of the Collector and report of Expert Group on the SIA study, and after considering all the reports, the government makes a recommendation for acquisition of land. Importantly, the proviso to Section 8(3) lays down that where the land sought to

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be acquired is governed by Section 2(2) of the Act, the government shall also ascertain whether prior consent of the affected families has been obtained in the prescribed manner. Therefore, the requirement of obtaining prior consent must stand fulfilled before the government examines the proposal under Section 8 of the Act. During examination, the government must ascertain that prior consent has been obtained, wherever applicable.

31. Once this legal position is laid down, it becomes clear that the view taken by the High Court, in holding that the process of obtaining prior consent is a continuous process which continues throughout the acquisition proceedings, is erroneous. The proposition laid down by the High Court is in teeth of the statutory provisions and has the effect of rendering a mandatory participative provision of the statute as practically redundant.

32. It is equally noteworthy that prior consent contemplated in Section 2(2) is to be taken in the manner prescribed by law. The legislature has been careful in using these expressions so as to avoid vague compliance of the provision by using innovative means, such as oral consent or consent by show of hands, etc. Rule 21 of Odisha Rules comes into picture here and it provides that prior consent of the affected families must be taken in Form J.

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33. In the present matter, the State has advanced a submission that the consent of 482 families has been obtained. However, the submission is not enough to sustain the acquisition for two reasons. *Firstly*, there is no material to show that consent has been obtained in Form J and in accordance with the procedure prescribed by Rule 21. The respondents have not placed any material on record to substantiate the submission. *Secondly*, even if it is assumed that consent has been obtained, it is apparent that no prior consent was in place at the time of examination by the government under Section 8 of the Act. As held above, the proposition that consent can be taken at all stages of acquisition is erroneous and defeats the whole purpose of "*prior*" consent. The statute provides for prior consent and there is no basis to justify subsequent consent, even if assumed to have been taken.

34. Even in view of the legislative scheme and objects of transparency and public participation, any subsequent consent cannot be justified. It would not only amount to defeating the core idea of the legislation but would also amount to rewriting the statute by introducing or materially modifying a requirement, which revolts against its entire scheme.

35. Interestingly, even the administrative approval granted by the State duly recorded that prior consent provisions of Section 2(2)(b)(i) of 2013 Act shall apply to the proposed acquisition. It

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is indicative of the State's own understanding of the statute. Despite so, the respondents proceeded without obtaining the same, possibly foreseeing that such consent was unlikely in view of the rejection of proposal by Gram Sabha(s). Despite specific reference to the correct provision in the original administrative approval, the High Court held it to be a case of 'misquoting' to justify the procedure under Section 2(1) of the Act. In fact, the State did not even raise this argument in the writ petition and credit must go to the High Court for its observations in this regard. As discussed above, we are unable to agree with the line of reasoning adopted in the impugned judgment.

36. As regards the ground of non-compliance of Section 41 as well, we are constrained to take a similar view. Section 41 has been incorporated as a special provision applicable to the acquisition of land falling in Scheduled Areas under Fifth Schedule to the Constitution of India. It is the admitted position that the land in question falls in the Scheduled Area of Sundergarh District of Odisha. The relevant part of Section 41 reads as:

> *"**41. Special provisions for Scheduled Castes and Scheduled Tribes.—***
> *(1) As far as possible, no acquisition of land shall be made in the Scheduled Areas.*
> *(2) Where such acquisition does take place it shall be done only as a demonstrable last resort.*

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> ***(3) In case of acquisition or alienation of any land in the Scheduled Areas, the prior consent of the concerned Gram Sabha or the Panchayats or the autonomous District Councils, at the appropriate level in Scheduled Areas under the Fifth Schedule to the Constitution, as the case may be, shall be obtained, in all cases of land acquisition in such areas, including acquisition in case of urgency, before issue of a notification under this Act, or any other Central Act or a State Act for the time being in force:***
> *Provided that the consent of the Panchayats or the Autonomous Districts Councils shall be obtained in cases where the Gram Sabha does not exist or has not been constituted.…"*
>
> *(emphasis supplied)*

37. Section 41 is framed as a bundle of various special provisions mentioned separately in its sub-sections. Sub-section (3) thereof lays down that in case of acquisition of land falling in the Scheduled Areas, prior consent of concerned Gram Sabha(s) "*shall be obtained*, *in all cases*". As regards the stage of this consent, the provision provides that it must be obtained before the issuance of a notification under the Act.

38. Notably, the controversy regarding prior consent of Gram Sabha pertains to the binding or non-binding nature of this requirement, and not to the stage of consent. Our analysis will be commensurate to the same. The High Court has adopted a unique mode of interpretation to turn down the appellants' challenge on this aspect. It took the phrase "*as far as possible*"

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from sub-section (1) and "*demonstrable last resort*" from sub-section (2) to hold that the requirement provided in sub-section (3) is merely directory, and not mandatory. Our short response to this novel interpretive technique is that it is wholly erroneous and unsustainable. Our long response would be as follows. Section 41 incorporates meaningfully distinct special provisions in its sub-sections. Sub-section (1) provides that as far as possible, acquisition in scheduled areas may be avoided; sub-section (2) provides that if such acquisition is felt as necessary, it must be done as a demonstrable last resort; and sub-section (3) provides that if the government finally decides to proceed with such acquisition, prior consent of Gram Sabha(s) must be obtained.

39. Whereas, sub-sections (1) and (2) are of guiding value, sub-section (3) operates in a completely different sphere and lays down a mandatory requirement for land acquisition in Scheduled Areas. Once the government finally decides to proceed with land acquisition in such areas, it has already crossed the stages contemplated in sub-sections (1) and (2), and has entered the stage contemplated by sub-section (3). At this juncture, the mandatory requirement of sub-section (3) cannot be negated by referring to the directory nature of the words used in sub-sections (1) and (2). To do so would not only be against the principle of simple and textual interpretation of the statute,

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but would also amount to a gross violation of the language and scheme of the statute. Therefore, we hold that the requirement of Section 41(3) of the Act is mandatory in nature, and there is nothing to suggest it to be directory or advisory.

40. This finding is not only consistent with the statute but also finds recognition in the observations recorded in the 24th Report of the Standing Committee on Rural Development and Panchayati Raj (2025-26) of 18th Lok Sabha titled as "*Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 – Implementation and Effectiveness*". In the section on observations/recommendations for the strict implementation of the provisions of 2013 Act, the Committee has observed that:

> *"2. Strengthening Role of Gram Sabha*
> *The Committee note that The Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 (LARR Act, 2013) significantly strengthens the role of the Gram Sabha, ensuring grassroots participation in the land acquisition process with key provisions of mandatory Prior Consent of Gram Sabha under the Fifth Schedule of the Constitution and Social Impact Assessment to empower rural communities, especially tribals and marginalized groups, with a decisive role in safeguarding their land and livelihoods. The Committee is highly concerned about the growing incidents where consent of Gram Sabha is obtained on paper just as a formality without actually involving the majority of*

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> *the population being affected by the respective projects. The Committee recommend to give more power to Gram Sabha by making their consent mandatory for all land acquisitions, not just in Scheduled Areas and to give Gram Sabha the power to veto land acquisition proposals that do not align with local development plans or community interests."*

41. The observations are quite interesting, as they reflect the consciousness and concern of the legislature regarding the growing instances of compromising with the requirement of taking Gram Sabha's prior consent and reducing it into a paper formality. The Committee not only restates that the requirement of such consent is mandatory in Scheduled Areas, but also recommends that such consent must be made mandatory to other areas as well. Unfortunately, the impugned judgment has the effect of reducing a mandatory statutory requirement into a paper formality. What is more concerning is that the present case is on an even worse footing. Far from a meaningful consent, there is not even paper consent of Gram Sabha in this case. This consent was required to be taken on Form M as per Rule 41 of Odisha Rules, and there is no such material on record. Contrarily, it is the admitted position that both the Gram Sabha(s) had expressly rejected the proposal at the threshold through the resolutions passed on 26.01.2020. Nevertheless, the respondents proceeded unhindered on the path of illegality.

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42. The High Court has observed that non-fulfilment of the requirement under Section 41 is an inconsequential irregularity. The company, drawing inspiration and taking the argument further, has effectively questioned the desirability of the requirement of obtaining consent from Gram Sabha. It has contended that this requirement violates the consent and will of the land owners. Without any hesitation, we reject both the contentions. The requirement under Section 41 has a sound constitutional and statutory basis. The Fifth Schedule of the Constitution is meant to confer enhanced protection to the lands falling in Scheduled Areas. Section 41 has been enacted in furtherance of this constitutional mandate and has been couched in a language that leaves no scope to infer it as a directory provision. The prescription of a dedicated form for obtaining this consent in Odisha Rules makes it further evident that the law prescribes a specific manner for obtaining such consent. Once law provides for a thing to be done in a particular and unambiguous manner, it must be done in that manner alone, or not at all. Moreover, it is not for this Court to question the wisdom of the legislature in incorporating a mandatory provision in the statute book, as long as the provision continues to be valid. The ground urged by the company regarding the desirability of Section 41(3) cannot be examined, as it essentially requires the Court to question the wisdom of the

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legislature, which we have invariably refrained from doing in the exercise of judicial review.

43. There is a peculiar observation in the impugned judgment that Section 41(3) does not provide for any sanction/consequence in case of violation of the said provision and thus, the provision must be deemed as directory. Consequence, though is one of the tests for determining whether a provision is directory or mandatory, is not the sole test. Once a provision is placed in the statute book after being clothed as a mandatory provision and the State acts in breach of the same, the remedy of judicial review by the Constitutional Courts gets triggered, irrespective of whether the statute does or does not explicitly provide for it. The power of judicial review against the acts of State and its instrumentalities flows directly from the Constitution. It cannot be curbed or weakened by any statute. Of course, existence of alternate remedy in the statute may be preferred.

44. We may now come to the objections regarding the SIA report and composition of the Expert Group. Section 4 and 5 of the 2013 Act provide for the conduct of a social impact assessment study to assess various factors including existence of public purpose, existence of affected families, extent of lands likely to be affected, acquisition of bare minimum land, enquiry regarding existence of alternate land, social impact of the

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project, etc. Admittedly, SIA report was prepared in this matter and we are clear that we are not examining the contents of the same. However, the provisions also provide for consultation and public hearing on the draft report. Such hearing must be conducted in the affected area. Conscious of this requirement in the present case, a public hearing was scheduled in the affected areas on 16.04.2021. However, there is no material to suggest that any hearing actually took place. The RTI responses indicate that no public hearing could be conducted due to Covid-19 restrictions, and the respondents have nothing to counter this contention. They have urged that a hearing was conducted, but could not be recorded due to non-cooperation and nuisance by some villagers. Notably, the views of the affected persons are required to be recorded in the final SIA report so that the Expert Group and appropriate government could have the benefit of examining the concerns of the affected persons. But no such views form part of the final report, which also points towards the appellants' contention that no hearing was conducted.

45. Insofar as the composition of Expert Group is concerned, the appellants' contention is that the Expert Group is supposed to be an independent body and the presence of one Mr. Ashok Kumar Sahoo vitiated the composition of the Group as he was connected to the requiring body/the company. There is no quarrel with respect to the fact that Mr. Sahoo was indeed

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connected to the company in the capacity of Advisor, Land Acquisition. The High Court turned down this argument by observing that Section 7 does not provide for a rigid composition of the Expert Group and it is merely an inclusive provision. It observed that Mr. Sahoo could have been legitimately included as a technical expert. Let us have a look at Section 7 of the Act, which reads thus:

> ***"7. Appraisal of Social Impact Assessment report by an Expert Group.—***
> *(1) The appropriate Government shall ensure that the Social Impact Assessment report is evaluated by an independent multi-disciplinary Expert Group, as may be constituted by it.*
> *(2) The Expert Group constituted under sub-section (1) shall include the following, namely:—*
> *(a) two non-official social scientists;*
> *(b) two representatives of Panchayat, Gram Sabha, Municipality or Municipal Corporation, as the case may be;*
> *(c) two experts on rehabilitation; and*
> *(d) a technical expert in the subject relating to the project…."*

46. Evidently, Section 7(2) is an inclusive provision and provides that the Expert Group shall include four different categories of members. No doubt, the Group could have a technical expert as a part of its composition, but the expert must be chosen in a manner that the mandate of independence under Section 7(1) is not compromised in any sense. Sub-section (1)

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explicitly states that the report must be evaluated by "*an independent multi-disciplinary Expert Group*". Thus, a challenge questioning the independence of the members of the Expert Group is sustainable. Importantly, the Expert Group has the mandate to examine and give its opinion regarding the existence or non-existence of public purpose in the project, social costs and adverse social impacts outweighing social benefits. *Is a person having direct financial and professional link with the requiring entity/project proponent expected to give an independent opinion that the required project is against public interest or involves disproportionate social costs or adverse social impacts?* The answer is a clear '*no'*.

47. Therefore, we are of the considered opinion that the inclusion of Mr. Sahoo in the Expert Group compromised with the statutory requirement of independence of the Group. It had the effect of rendering the deliberation of the Expert Group as a fixed match. The respondents have, thus, violated Section 7 of the Act.

48. We may now come to the argument regarding the interplay of MMDR Act and 2013 Act. In order to defend this challenge, the respondents seem to have adopted a two-pronged strategy. While trying to demonstrate that the subject acquisition has been carried out in accordance with 2013 Act, they have also attempted to show that MMDR Act operates as a

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complete code insofar as mining activity is concerned. However, the ultimate argument seems to be that both 2013 Act and MMDR Act must be read together and effect must be given to both.

49. On a careful analysis of both the legislations, we are of the view that the respondents have endeavored to introduce an artificial conflict between the two legislations. The 2013 Act and MMDR Act operate in completely distinct spheres and regulate different aspects of a mining project. There is no occasion to hold any of their provisions to be in conflict *inter-se*. MMDR Act lays down the pre-requisites for carrying out mining activity; regulates the relationship between the State and mining lessee/licensee; and provides for penalties for various acts such as illegal entry, unauthorized mining etc. One of the pre-requisites for carrying out mining activity is to have a lease or license from the State. In the present case, there is a lease between the State and the company. However, MMDR Act nowhere suggests that the existence of such lease would override all other statutory requirements of law. The requirement of lease only governs the contractual relationship between the State and mining company. It cannot be construed to affect the proprietary rights of the landowners of the land on which mining is proposed to take place. A bilateral relationship based on lease between two parties cannot affect the proprietary

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rights of third-party land owners, who are independent to such lease. The mineral lease provides mineral concession to the lessee and royalty to the State. The landowner has no privity with it and has no benefit to derive from the same. Suffice to note that a contractual arrangement between State and mining lessee cannot affect third parties in the manner urged by the company.

50. The 2013 Act provides for acquisition of land for the purpose of mining project, which is something that MMDR Act does not provide for. There appears to be no conflict between the provisions governing lease in MMDR Act and provisions for land acquisition under 2013 Act. They operate in distinct spheres and full effect can be given to both without any disharmony. Section 103 of 2013 Act provides that the provisions of the Act operate in addition to other laws and not in derogation thereof. We have no reason to disagree with it and there is no question of derogation of MMDR Act by following the statutory procedure for land acquisition as per 2013 Act.

51. The respondents have referred to Section 24A of MMDR Act to contend that the said provision lays down the lessee's right to enter upon the leased land to carry out mining operations. The provision requires reproduction:

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> ***"24A. Rights and liabilities of a holder of mineral concession.—***
> *(1) On the issue of a mineral concession under this Act and the rules made thereunder, it shall be lawful for the holder of such permit, licence or lease, his agents or his servants or workmen to enter the lands over which such permit, lease or licence had been granted at all times during its currency and carry out all such reconnaissance, prospecting or mining operations as may be prescribed:*
> *Provided that no person shall enter into any building or upon an enclosed court or garden attached to a dwelling-house (except with the consent of the occupier thereof) without previously giving such occupier at least seven days' notice in writing of his intention to do so.*
> *(2) The holder of a mineral concession referred to in sub-section (1) shall be liable to pay compensation in such manner as may be prescribed to the occupier of the surface of the land granted under such permit, licence or lease for any loss or damage which is likely to arise or has arisen from or in consequence of the reconnaissance, mining or prospecting operations.*
> *(3) The amount of compensation payable under sub-section (2) shall be determined by the State Government in the manner prescribed."*

52. A bare reading of the provision makes it evident that it makes it lawful for the mineral lessee to act in furtherance of the mineral lease at all times and to carry out mining operations. It provides that if any loss is caused to the occupier of surface of the land in the course of operations, the lessee shall

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compensate the occupier for loss or damage. The respondents seek to read this provision to mean that mere grant of mining lease enables the lessee to conduct mining operations on payment of compensation under Section 24A to the occupiers, without anything more.

53. We must tread carefully while dealing with this submission. It is so because the scope of the present case is quite limited and the submission has the potential to take this Court on an academic path and lead it into over-adjudication of the *lis*. In the instant case, we are not examining whether acquisition of land was possible in some other legislation such as Land Acquisition (Mines) Act, 1885[10] or whether mining activity was permissible without acquisition and on payment of compensation under MMDR Act read with MCR Rules. Even if we assume that these courses were open to the company, it is clear that they were not adopted. Being desirous of carrying out mining activity on the subject land, the company admittedly chose to initiate a proposal under the 2013 Act. We must be mindful of the fact that the company has not chosen any other route, if at all it was available, under 1885 Act or MMDR Act or MCR Rules. These provisions have been invoked only as defence in the present proceeding and no proceeding has been carried out under these provisions. Therefore, we are not

[10] Hereinafter referred as "1885 Act"

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concerned with these hypothetical possibilities, and are only concerned with the legality of the process chosen by the respondents i.e. process under 2013 Act.

54. Although we refrain from expressing any final view on these possibilities, we *prima facie* find that the submission is not only based on an incorrect reading of Section 24A, but is also in complete derogation of 2013 Act. Section 24A talks about compensation for loss or damage caused or likely to be caused during the conduct of mining operations. It cannot be construed to mean that a mining lessee can start mining activity on any land by simply paying some compensation to the occupier, and without acquiring the land in accordance with 2013 Act. Compensation payable on account of loss or damage caused to the land, and that payable on account of acquisition of land, cannot be equated. The respondents have indulged in a clear misreading of the provision under Section 24A of MMDR Act. They have tried to convert a right acquired under the mining lease to completely override the 2013 Act. This reading is also in the teeth of Section 2 of 2013 Act, which explicitly provides for acquisition of land by the government for the purpose of mining. If mining activity was permissible solely on the basis of a mining lease and compensation under Section 24A of MMDR Act, the legislature ought to have omitted

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'mining' from the list of purposes for which land acquisition could be carried out under the 2013 Act.

55. The reference to Rule 52 of MCR Rules is also inconsequential to the case at hand. It pertains to the payment of annual compensation to the owners of surface rights. However, for reasons discussed above, we find it sufficient to note that no dispute pertaining to annual compensation arises in this matter. We repeat that we are only dealing with the legality of the proceedings carried out under 2013 Act.

56. In view of the above discussion, we have no doubt in observing that both 2013 Act and MMDR Act can be construed harmoniously, and full effect can be given to their respective provisions without any derogation. Having once started a process for land acquisition under Section 2 of 2013 Act, the respondents cannot now be permitted to avoid a challenge to the said process by contending that such acquisition was not even required in view of MMDR Act or other laws. Even if it was not so required, we are not concerned with that. We are concerned with the fact that a process has been carried out in violation of the 2013 Act, and the affected persons cannot be deprived of their proprietary rights or interests in view of the illegalities committed in the process.

57. On the issue of *locus standi*, we may only observe that the respondent State cannot be permitted to question the locus

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after failing to discharge its statutory duty to update the record of rights during the acquisition process. Without updating the records, the State cannot take a stand that the appellants are not affected by the acquisition. Further, one of the appellant's name was admittedly mentioned in the record of rights, however, his locus was questioned because his signature was not present in the affidavit. Instead of outrightly declaring that he lacked *locus standi*, despite finding his name in the record of rights, the High Court ought to have directed the concerned individual to furnish a fresh affidavit. When the State is found to have indulged in illegality and breach of statute, a Constitutional Court is not expected to turn down a challenge solely for technical reasons, that too when the defect was curable and could have been an outcome of State's own inaction. Nevertheless, it goes to the credit of the High Court that it has decided the challenge on merits and accordingly, we have also decided this appeal on merits.

58. In finality, we allow the writ petition, and hold that the land acquisition in question is unsustainable. The acquisition, along with the relevant notifications, orders etc., is hereby set aside. The impugned judgment is also set aside.

59. We make it clear that this decision shall not operate as an embargo in initiating fresh land acquisition process in

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accordance with the law and our findings in this judgment. The respondents shall be at liberty to do so.

60. Accordingly, the appeal stands disposed of along with pending application(s), if any.

…….J.
[DIPANKAR DATTA]

……J.
[SATISH CHANDRA SHARMA]

New Delhi
November 18, 2026.