IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR.JUSTICE K.VINOD CHANDRAN

&

THE HONOURABLE MR.JUSTICE C. JAYACHANDRAN

WEDNESDAY, THE 19TH DAY OF JANUARY 2022 / 29TH POUSHA, 1943

WA NO. 167 OF 2020

AGAINST THE ORDER IN R.P.NO.601 OF 2019 DATED 28.11.2019

JUDGMENT IN WP(C) NO.7295/2018 OF HIGH COURT OF KERALA DATED 09.11.2018

APPELLANT/REVIEW PETITIONER:

VALLAMATTOM STONE AGGREGATES (PVT) LTD
PANDAPILLY P.O., AARAKUZHA VILLAGE,
MUVATTUPUZHA, ERNAKULAM-686672,
REPRESENTED BY ITS MANAGING DIRECTOR
GEORGE K.VALLAMATTOM.

BY ADVS.
SHINOJ.K.N
C.K.RAPHEEQUE
K.B.NIDHINKUMAR
PHILIP J.VETTICKATTU
SAJITHA GEORGE

RESPONDENTS/RESPONDENTS:

1 **STATE OF KERALA**
REPRESENTED BY ITS SECRETARY TO GOVERNMENT,
REVENUE DEPARTMENT, THIRUVANANTHAPURAM-695001.

2 **THE GEOLOGIST**
DEPARTMENT OF MINING AND GEOLOGY,
CIVIL STATION, KAKKANAD,
ERNAKULAM-682030.

3 THE DIRECTOR OF MINING AND GEOLOGY,
OFFICE OF MINING AND GEOLOGY,
KESAVADASAPURAM, PATTOM,
THIRUVANANTHAPURAM-695001.

4 THE DISTRICT COLLECTOR,
COLLECTORATE, KAKKANAD,
ERNAKULAM-682030.

5 TAHSILDAR
TALUK OFFICE, MUVATTUPUZHA-686675.

BY ASHWIN SETHUMADHAVAN, SR. GOVERNMENT PLEADER

THIS WRIT APPEAL HAVING COME UP FOR ADMISSION ON 04.12.2021, THE COURT ON 19.01.2022 DELIVERED THE FOLLOWING:

CR

K.VINOD CHANDRAN & C.JAYACHANDRAN, JJ.

W.A.No.167 of 2020

Dated this the 19th day of January, 2022

JUDGMENT

Vinod Chandran, J.

A batch of writ petitions challenged the recovery of damages equivalent to compensation under S.6(3) of the Kerala Land Conservancy Act, 1957, [for brevity, 'the KLC Act'] initiated by the Revenue Department. The damages were levied for quarrying operations carried out in excess of the quantity permitted. The appellant was also one of the petitioners. The major grounds raised by way of an amendment of the writ petition was that no quantity is prescribed under the lease agreement and hence the appellant, like the other quarry owners, were liable to pay only the amount under the consolidated royalty payment; which enables unlimited quarrying.

2. The Government contended that though the

quantity is not prescribed in the lease, the amounts to be paid under the lease agreement is specified, as also the tonnage charges, which more than anything specifies the quantity permissible under the lease agreement. The learned Single Judge extracted S.6 of the KLC Act and also Rule 89 of the Kerala Minor Mineral Concession Rules, 2015 (MMC Rules, 2015). S.6 was found to be dealing with removal of articles by securing licence/permits from the Government and also prescribes the fees payable. The contention that there is no rate fixed by the Government to determine the compensation and recover the same, was negatived based on Ext.R3(f), filed in W.P(C) No.7838 of 2018; a Government notification dated 02.02.2015, which indicates the schedule of fees. The argument that sub-section (3) of S.6 deals with only compensation and not damages, was also met by finding that the damages spoken of in S.6(3) is equivalent to the compensation under S.6(2). The contention of the petitioners that there is no statutory authorisation for

recovery of damages, other than compensation was negatived. The contention raised on S.89 was brushed aside on the finding that it is applicable only to a quarry operator possessing a metal crusher unit; if he registers under the Rules by paying a fee of Rs.1,000/- and also opts for payment of consolidated royalty. It was held that since there were no materials produced to establish such option having been exercised, the appellant does not get the benefit under S.89. It was also held that there is no provision under the KLC Act or the Concession Rules enabling the appellant to go beyond the specific condition in the lease agreement. The appeals filed by the others were dismissed by a Division Bench in *Binoy Kumar v. State of Kerala (2019 (2) KLT 227)*. The appellant's appeal was dismissed following the above decision. The appellant pursued the matter before the Hon'ble Supreme Court, by way of an SLP. Before the Hon'ble Supreme Court, the appellant contended that the order relied upon is not applicable in the case of the

petitioner, on which ground, it was observed that the appellant could move the High Court itself. The SLP stood dismissed, without any expression on the merits of the case and leaving liberty to approach the Supreme Court, if it eventually becomes necessary. Based on this, a review was filed, which stood dismissed by the learned Single Judge. The order in review and the judgment are challenged before us.

3. The grounds urged for review were two fold, that the appellant is entitled to get the benefit of payment of consolidated royalty, under both the MMC Rules, ie: unlimited quarrying. The learned Single Judge found that, to get the benefit of Rule 89 of MMC Rules, 2015, a quarry owner, who has a metal crusher unit, has to opt for compounding and secure a separate registration by paying an amount of Rs.1000/-. Finding that there is no option exercised by the appellant, the review petition was rejected. The other ground raised is that after the Mines & Minerals (Development & Regulation) Act, 1957 the

State is denuded of the power to demand damages or compensation under the KLC Act.

4. The learned counsel for the appellant argued that the demands raised against the appellant are with respect to leases covered by the Minor Mineral Concession Rules, 1967 (MMC Rules, 1967) for 2014-15 and under the MMC Rules, 2015, for the years 2015-16 and 2017-18. During the period under MMC Rules, 1967, it is pointed out that there are three modes prescribed for determination and payment of royalty, which are at Schedules I, IV and V. What is applicable to the appellant is that under Schedule IV; the appellant being a quarry-lease holder having a crusher unit. Rule 48P is a non-obstante provision by which a registered metal crusher unit, which is in possession of a quarry lease or permit, is mandatorily required to pay consolidated royalty. As per Schedule IV, instead of the royalty payable under Schedule I, consolidated royalty is payable and in that event there is no restriction as to the

quantity permitted to be quarried. This provision was also made applicable to persons with only quarrying permit or license as per sub-rule (1A) of Rule 4, introduced in 2008. From then on, there is no restriction in the quantity; (i) if a grantee/licensee/lessee of a quarry also has a metal crusher unit for which consolidated royalty is paid under Schedule IV and (ii) a quarry owner without a crusher unit, who pays consolidated royalty under Schedule V. Even on the introduction of MMMC Rules, 2015 the position remained the same if a metal crusher unit, holding a quarry-lease or permit, paid consolidated royalty under Schedule III. One who has only a quarrying lease or permit, has to pay consolidated royalty under Schedule IV. While under the 1967 rules there was no option, the 2015 rules provided an option. The learned counsel would also contend that, in fact, the appellant has paid consolidated royalty, far in excess, of that applicable for the quantity assessed as excess quantity. The learned counsel for the appellant

also submits that Exts.P11(a),P11(b) and P11(c) clearly indicates the amounts paid as consolidated royalty, which establishes the option having been exercised by the appellant. The writ appeal, hence, has to be allowed, is the contention.

5. The learned Government Pleader points out that Ext.R5(a) is the proceeding by which the grant has been made to the appellant, which restricts the quarrying to 10,000 metric tonnes per year. It is based on Ext.R5(a) that Ext.P2 agreement has been entered into. The quarrying lease cannot be read in isolation and the terms, as available in Ext.R5(a) grant, applies equally to the appellant.

6. The issue raised under Section 89 of the MMC Rules, 2015 we find, is already covered by the decision in ***Binoy Kumar*** (supra) and so is the claim based on a mandatory consolidated royalty having been brought out in the MMC Rules, 1967. Chapter VIIB was incorporated in the Rules of 1967, with the purpose of introducing a

consolidated royalty. Therein, it was provided that a holder of registered metal crusher unit producing metals of various size from granite building stones, who is also in possession of a quarrying lease or permit, shall opt to pay consolidated royalty at the rates specified in Schedule IV, instead of paying royalty at the rate specified in Schedule I and also provided two half yearly instalments for such payment. The mode of application, that is the form and manner in which it is to be made, was specified in 48P. The non-obstante clause in Rule 48P makes it mandatory for a quarrying permit holder, who also has a metal crusher unit, to pay consolidated royalty, as per schedule IV, not withstanding the other provisions under which royalty is payable as per Schedule I. The consolidated royalty payable under Schedule IV was also based on the jaw size of the metal crusher. The provision only fixes the royalty payable and does not speak of the quantity, which is permitted to be quarried. Admittedly, the quarrying lease of the petitioner was

granted as per Ext.R5(a) order dated 27.12.2007. The period specified was 12 years from the date of execution of the quarrying-lease deed.

7. One of the conditions as available under Ext.R5(a) order under the MMC Rules, 1967, at item No. (8), provides that the production of granite building stone from the area covered under the leased land shall be restricted to 10,000 (Ten thousand only) metric tonnes per year, during the tenure of the quarrying lease. Ext.P2 is the agreement entered into between the Government and the appellant by which the Government, in consideration of the rents and royalties, demised the land measuring 0.026 hectares of land described in the schedule to hold the same for a period of 12 years, commencing from 09.01.2008 and ending on 08.01.2020. The area of the property and the schedule, are that specifically noticed in Ext.R5(a). The agreement is also made, subject to the terms and conditions contained in the MMMC Rules, 1967 which takes in the lease granted by

the Government at Ext.R5(a). It is also specified that "any condition prescribed in the Kerala Minor Mineral Concession Rules, but left out in this case, which may be found applicable to the lessee, shall be treated as binding on the lessee". Hence there is no escape from the restriction of quarrying as prescribed in Ext.R5(a), which is 10,000 metric tonnes per year.

8. Admittedly, the appellant was having a permit as per Ext.R5(a), based on which lease agreement Ext.P2 was entered into, on the strength of which quarrying operations were commenced from 2008 onwards. The appellant was also having a metal crusher unit and was obliged to pay the consolidated royalty, as provided for in Chapter VIIB, which was introduced in the Rules of 1967, far earlier to the lease executed; in the year 2002. The contention of the learned counsel that huge amounts were invested for having a crusher unit simultaneous with the quarrying permit, which was made only looking at the provision for payment of consolidated

royalty, cannot at all be accepted. When the appellant ventured into the business, he was aware of the restriction of quantity in his permit, which stands incorporated in the lease agreement executed and it was his option to have a metal crusher unit, along with the quarrying permit. The appellant was also aware, even at that stage that he would be required to pay consolidated royalty, as provided under Schedule IV and not under Schedule I. If the consolidated royalty payable, when juxtaposed with the profit generated from the quantity permitted, was not a profitable venture, there was no reason why he should have commenced the venture. The plea being one of wrong understanding of the provision, we cannot come to the aid of the appellant. Ignorance is no excuse, when a business venture is commenced with open eyes and the stipulations and liabilities were clearly spelt out in the rule framed. There cannot be a plea taken of wrong understanding or mistaken interpretation.

9. The learned counsel also questioned the logic

of consolidated royalty being applied with reference to the jaw size of the metal crusher, when there is a restriction in the quantity. Though such a plea cannot be taken at this stage, it also has to be observed that often in prescribing compensation or royalty, it is not the value of the quarried material that is taken into account and there is always the larger aspect of environmental depredation, which weighs on the Government, in prescribing the compensation or royalty. This concern is reflected in paragraph 13 of Ext.P2 lease agreement, which reads as follows:-

> *" On the expiration of the terms of this lease or on its earlier determination under clause 12 the lessee shall pay to the State Government for all land which has been rendered useless for agriculture through the exercise of the powers demised by this lease such sum as the District Collector may fix as equivalent to the capitalized value or the land revenue of such land rendered useless. The lease shall continue if the sums are not cleared before the date of determination of notice".*

10. As far as the MMC Rules, 2015 is concerned, there was available an option to pay royalty in the

consolidated mode or otherwise. Normally, royalty would be payable at the rates specified in Schedule I for any quarry activity and in case of holders of quarry-lease, who also possess metal crusher units, payment can be under Schedule III, as per rule 89, if a registration is made by paying a fee of Rs.1000/- and an option exercised for payment of consolidated royalty. Admittedly, the appellant, with open eyes, exercised the option, on an understanding that the quantity specification as per the permit and the lease agreement, would no longer be there; again a wrong understanding and mistaken interpretation. We do not think that the decision in *Star Metals v. State of Kerala [2011 (3) KLT SN 100 (C.No. 100)]* has any application since that is in the context of the provision to pay value added tax at compounded rates. The rates prescribed were with reference to the size of the machines used in the crusher units, which has a co-relation to the goods produced by such machines and the tax is also payable on such goods produced by the

machines. Here there can be no such co-relation found and the mere factum of payment of consolidated royalty does not free the leseee/licensee from the restriction provided of the quantity that can be quarried.

11. One other contention taken is that Section 6 does not provide for any damages and the rates having not been fixed, there is no question of levy or consequential demand under the KLC Act. But before that we have to consider the second ground, of the State having been denuded of the power to levy damages or compensation under the KLC Act. That there is power to levy penalty for any unauthorised quarrying, which takes within its ambit, quarrying beyond the prescribed limit, under the MMC Rules, 1967 and the MMC Rules, 2015, cannot at all be disputed. However in the present proceedings, the levy is made under S.6 of the KLC Act and the question looms large as to whether the said provision has application after the Mines and Minerals [Development and Regulation] Act [MMDR Act, 1957] has come into effect.

12. A Division Bench of this Court in ***Crystal Granite Ltd. v. State of Kerala [2019 (1) KLT 562]*** considered the very same question. It was found that though the power to legislate under Entry 23 List II, which is subject to Entry 54 of List I, was taken away by MMDR Act, 1957; the power of the State under Entry 18 List II encompasses all aspects of land and brings within its sweep all rights in respect of lands. It was also found that the MMDR Act, 1957, though takes away the power of the State to make laws under Entry 23 of List II, by S.15 of MMDR Act, power to regulate quarry leases, mining leases or other mineral concessions in respect of minor minerals have again been conferred on the State. This keeps in tact, the power of the State to legislate as provided under Entry 23 of List II. By virtue of Entry 18 of List II, under which the KLC Act has been brought out, recovery of seigniorage as provided under that Act and Rules was held to be permissible; the sustainability of which was the issue dealt with by the Division Bench.

13. The learned Counsel for the appellant however places reliance on three Constitution Bench decisions of the Hon'ble Supreme Court; ***Hingir-Rampur Coal Company Ltd. v. State of Orissa [AIR 1961 SC 459]***, ***State of Orissa v. M.A.Tulloch & Company [AIR 1964 SC 1284]*** and ***Baijnath Kedia v. State of Kerala [(1969) 3 SCC 839]***. ***Hingir-Rampur Coal Co. Ltd.*** [supra] considered the issue of whether Orissa Mining Areas Development Fund Act, 1952 was ultravires the powers of the State Legislature for reason of the MMDR Act of 1948, having declared the regulation and development of mines to be under the control of the Union. There were other grounds of challenge against the levy under the State Act, which we are not for the moment, concerned with and hence reference is confined to the ground of the statute being ultravires on the ground of the declaration in the central legislation. The validity of the impost was upheld for the reason that the State Act was a post-Constitution enactment and the Central Act of 1948 a pre-

Constitution Law, which cannot be said to have made the requisite declaration in terms of Entry 54 of List I. The issue of the State having within itself the powers under Entry 23 of List II when a declaration as required under Entry 54 of List I is made, in an enactment by the Parliament, was considered and answered in the following manner:

> ***"What Entry 23 provides is that the legislative competence of the State Legislature is subject to the provisions of List I with respect to regulation and development under the control of the Union, and Entry 54 in List I requires a declaration by Parliament by law that regulation and development of mines should be under the control of the Union in public interest. Therefore, if a Central Act has been passed for the purpose of providing for the conservation and development of minerals, and if it contains the requisite declaration, then it would not be competent to the State Legislature to pass an Act in respect of the subject-matter covered by the said declaration. In order that the declaration should be effective it is not necessary that rules should be made or enforced; all that is required is a declaration by Parliament that it is expedient in the public interest to take the regulation and development of mines under the control of the Union. In such a case the test must be whether the legislative declaration covers the field or not. Judged by this test there can be no doubt that the field covered by the impugned Act***

is covered by the Central Act 53 of 1948."

But since the Act of 1948 was a pre-constitution law, the declaration available in it was not as required under the Constitution, held the Constitution Bench, upholding the impost.

14. In *M.A.Tulloch & Company* [supra] the question arose again as to whether on a proper declaration being made by the Parliament under Entry 54 of List I as available in the MMDR Act, 1957, the levy for the earlier period could survive. The levy challenged, due for the period July, 1957 to March, 1958, was again the same one under the Orissa Act of 1952, which was considered in *Hingir-Rampur Coal Co. Ltd.* [supra]. It was found that the scope and ambit of the Central Act of 1948 was materially the same as that of the Central Act of 1957. The impost under the State Act was upheld only on the ground of the declaration in the Act of 1948 not being in terms of Entry 54 of List I. Their Lordships categorically held that the MMDR Act,

1957 having covered the entire area under Entry 23 of List II; rendered the State Act, on the same field, otiose. It was held: "*The test of two legislations containing contradictory provisions is not, however, the only criterion of repugnancy, for if a competent legislature with a superior efficacy expressly or impliedly evinces by its legislation an intention to cover the whole field, the enactments of the other legislature whether passed before or after would be overborne on the ground of repugnance. Where such is the position, the inconsistency is demonstrated not by a detailed comparison of provisions of the two statutes but by the mere existence of the two pieces of legislation" (sic-para14).* However the challenge against the levy was declined because the demands made was for the six quarters from September, 1956 to March, 1958, while the MMDR Act, 1957 came into effect only on 01.06.1958.

15. *Baijnath Kedia* [supra], another Constitution Bench decision, squarely applies to the facts of the

instant case. There, the mines, for which lease for quarrying was obtained from private parties, by the Bihar Land Reforms Act, 1950 stood vested in the State of Bihar on the very same terms of the original lease; with the ex-landlords ceasing to have any interest thereon. Later in the year 1965 the Land Reforms Act, specifically S.10, was amended incorporating a provision to alter the terms and conditions with regard to leases of minor minerals and substituting it with the corresponding terms and conditions in the Bihar Minor Mineral Concession Rules, 1964. The demand raised for dead rent, royalty and surface rent as per the Bihar MMC Rules was under challenge. The respondent-State contended before the Hon'ble Supreme Court; (i) that one topic of legislation concerns land and therefore falls under Entry 18 List II (ii) that S.4 to S.14 of the MMDR Act does not envisage control of the Union, which is a condition precedent to the ousting of the jurisdiction under Entry 23 of List II and (iii) that modification of existing leases was a

separate topic altogether and not covered by S.15 of Act 67 of 1957; the identical contentions found favour in *Crystal Granite Limited* [supra]. The Hon'ble Supreme Court answered these contentions in paragraphs 18,19 and 23, which are extracted hereunder:

> *"18. Mr Lal Narain Sinha argued that the topic of legislation concerns land and therefore falls under Entry 18 of the State List and he drew our attention to other provisions on the subject of mines in the Land Reforms Act as originally passed. The abolition of the rights of intermediaries in the mines and vesting these rights as lessors in the State Government was a topic connected with land and land tenures. But after the mining leases stood between the State Government and the lessees, any attempt to regulate those mining leases will fall not in Entry 18 but in Entry 23 even though the regulation incidentally touches land. The pith and substance of the amendment to Section 10 of the Reforms Act falls within Entry 23 although it incidentally touches land and not vice versa. Therefore this amendment was subject to the overriding power of Parliament as declared in Act 67 of 1957 in Section 15. Entry 18 of the State List, therefore, is no help.*
>
> *19. Mr Lal Narain Sinha next contended that the provisions of Sections 4-14 do not envisage "control of the Union" which is a condition precedent to the ousting of the jurisdiction under Entry 23, Obviously Mr Lal Narain Sinha reads Union*

as equivalent to Union Government. This is erroneous. Union consists of its three limbs, namely, Parliament, Union Government and the Union Judiciary. Here the control is being exercised by Parliament, the legislative organ of the Union and that is also control by the Union. By giving the power to the State Government to make rules, the control of Union is not negatived. In fact, it establishes that the Union is exercising the control. In view of the two rulings of this Court referred to earlier we must hold that by enacting Section 15 of Act 67 of 1957 the Union has taken all the power to itself and authorised the State Government to make rules for the regulation of leases. By the declaration and the enactment of Section 15 the whole of the field relating to minor minerals came within the jurisdiction of Parliament and no scope was left for the enactment of the second proviso to Section 10 in the Land Reforms Act. The enactment of proviso was, therefore, without jurisdiction.

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21. We have already held that the whole of the legislative field was covered by the Parliamentary declaration, read with the provisions of Act 67 of 1957, particularly Section 15. We have also held that Entry 23 of List II was to that extent cut down by Entry 54 of List I. The whole of the topic of minor minerals became a Union subject. The Union Parliament allowed rules to be made but that did not recreate a scope for legislation at the State level. Therefore, if the old leases were to be modified a legislative enactment by Parliament on the lines of Section 16 of Act 67 of 1957 was necessary. The place of such a law could not be taken by legislation by the State Legislature as it purported to do by enacting the second proviso

to Section 10, of the Land Reforms Act. It will further be seen that Parliament in Section 4 of Act 67 of 1957 created an express bar although Section 4 was not applicable to minor minerals. Whether Section 4 was intended to apply to minor minerals as well or any part of it applies to minor minerals are questions we cannot consider in view of the clear declaration in Section 14 of Act 67 of 1957 that the provisions of Sections 4-13 (inclusive) do not apply. Therefore, there does not exist any prohibition such as is to be found in Section 4(1) proviso in respect of minor minerals. Although Section 16 applies to minor minerals it only permits modification of mining leases granted before October 25, 1949. In regard to leases of minor minerals executed between this date and December 1964 when-Rule 20(1) was enacted, there is no provision of law which enables the terms of existing leases to be altered. A mere rule is not sufficient.

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23. The contention was that modification of existing leases was a separate topic altogether and was not covered by Section 15 of Act 67 of 1957. Therefore if Parliament had not said anything on the subject the field was open to the State Legislature. The other side pointed to the words 'and for purposes connected therewith' in Section 15 and contended that those words were sufficiently wide to take the modification of leases. Mr Lal Narain Sinha's argument is unfortunately not tenable in view of the two rulings of this Court. <u>On the basis of those rulings we have held that the entire legislative field in relation to minor minerals had been withdrawn from the State Legislature. We have also</u>

held that vested rights could only be taken away by law made by a competent legislature. Mere rule-making power of the State Government was not able to reach them. The authority to do so must, therefore, have emanated from Parliament. The existing provision related to regulation of leases and matters connected therewith to be granted in future and not for alteration of the terms of leases which were in existence before Act 67 of 1957. For that special legislative provision was necessary. As no such parliamentary law had been passed the second sub-rule to Rule 20 was ineffective. It could not derive sustenance from the second proviso to Section 10(2) of the Land Reforms Act since that proviso was not validly enacted."

[underlining by us for emphasis]

16. The Division Bench in *Crystal Granite Ltd.* [supra] upheld the demand made under the Land Conservancy Act, 1957 [Kerala] under Entry 18 List II on the finding that it encompasses all aspects of land, which brings within its sweep all conceivable rights in respect of lands. The Constitution Bench of the Hon'ble Supreme Court held that after the MMDR Act, 1957 the mining leases would fall neither under Entry 18 List II nor under Entry 23 List II. It was also held that the whole of the topic of minor minerals stand covered under the

Central Act, which has the declaration under Entry 54 of List I. The State is completely denuded of the power to legislate and the KLC Act, 1957, which came into force on 01.05.1958 ceases to have any effect in so far as minor mineral leases, license or permits are concerned, after 01.06.1958, on which date MMDR Act, 1957 came into force. Rule 15 of the MMDR Act, 1957 only confers the Rule making power on the State within the confines of the 1957 Act and does not permit legislation on that count. Hence the KLC Act would not stand saved even under Rule 15 of the MMDR Act.

17. Hence on the dictum of the three Constitution Benches referred to above, we with all the respect at our command, find the decision of the Division Bench in *Crystal Granites Limited* [supra] to be wrongly decided. We would have normally referred the matter for consideration to a Larger Bench. However, the decision of the Division Bench is rendered *per incuriam* and *sub silentio*. A Full Bench of this Court in *Haris v. Jahfar*

[2021 (4) KLT 155 (F.B.)] **considered the exceptions of *per incuriam* and *sub silentio*. The Full Bench made the following quotations:**

> ***"20. This Court in A.R. Antulay v. R.S. Nayak (1988 (1) KLT OnLine 1012 (SC) =(1988) 2 SCC 602 : 1988 SCC (Cri.) 372) in para 42 has quoted the observations of Lord Goddard in Moore v. Hewitt [(1947) 2 All ER 270 (KBD)] and Penny v. Nicholas[(1950) 2 All. ER 89 (KBD)] to the following effect:***
>
> > ***"'Per incuriam' are those decisions given in ignorance or forgetful-ness of some inconsistent (sic) statutory provision or of some authority binding on the court concerned,so that in such cases some part of the decision or some step in the reasoning on which itis based, is found, on that account to be demonstrably wrong."***
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> ***25. In paragraph 41 of the judgment in State of U.P. v. Synthetics & Chemicals Ltd. reported in (1991 (2)KLT OnLine 1005 (SC) = (1991) 4 SCC 139), the Hon'ble Supreme Court held thus:***
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> > ***"41. Does this principle extend and apply to a conclusion of law, which was neither raised nor preceded by any consideration. In other words can such conclusions be considered as declaration of law? Here again the English courts and jurists have carved out an exception to the rule of precedents. It has been explained as rule of sub-silentio. "A decision passes sub-silentio, in the technical sense that has come to be attached to that phrase, when the particular point of law involved in the decision is not perceived by the court or***

present to its mind." (Salmond on Jurisprudence 12th Edn., p. 153). In Lancaster Motor Company (London) Ltd. v. Bremith Ltd. [(1941) 1 KB 675, 677 : (1941) 2 All ER 11] the Court did not feel bound by earlier decision as it was rendered 'without any argument, without reference to the crucial words of the rule and without any citation of the authority'. It was approved by this Court in Municipal Corporation of Delhi v. Gurnam Kaur (1988 (2) KLT SN 63 (C.No. 90) SC = (1989) 1 SCC 101). The bench held that, 'precedents sub-silentio and without argument are of no moment'. The courts thus have taken recourse to this principle for relieving from injustice perpetrated by unjust precedents. A decision which is not express and is not founded on reasons nor it proceeds on consideration of issue cannot be deemed to be a law declared to have a binding effect as is contemplated by Article 141. Uniformity and consistency are core of judicial discipline. But that which escapes in the judgment without any occasion is not ratio decidendi."

18. In the teeth of the binding precedents of the Hon'ble Supreme Court as cited above, that too all three, of Constitution Benches of five Judges, we are of the opinion that there need not be any reference to a Full Bench. As has been held in *Municipal Corporation of Delhi v. Gurnam Kaur [AIR 1989 SC 38]:* *'precedents sub silentio and without argument are of no import'* (sic).

Article 141 of the Constitution of India also commands us to follow the decisions of the Hon'ble Supreme Court, even though a coordinate Bench of the High Court has held otherwise in *Crystal Granites Ltd.* [supra]; which Division Bench did not notice the Supreme Court judgments and the dictum laid down was directly opposite to that laid down by the Hon'ble Supreme Court.

In the above circumstances, we set aside the order and the demand notices passed under S.6 of the KLC Act. However we leave liberty to the authorities under the MMC Rules to proceed under the said Rules for any unauthorised mining or quarrying carried out by the appellant with notice issued and after affording an opportunity of hearing, based on our finding that the payment of consolidated royalty does not permit the lessees/licencees to quarry minor minerals in excess of that permitted while granting such leases/licences, either in the permission granted, the agreement or as applicable under the MMC Rules. Writ appeal allowed with

the above observation.

Sd/-

K.VINOD CHANDRAN, JUDGE

Sd/-

C.JAYACHANDRAN, JUDGE

sp/lgk.

APPENDIX

PETITIONER'S EXHIBITS:-

ANNEXURE I	-	TRUE COPY OF THE COUNTER FOIL SHOWING THE REMITTANCE OF RS.1,000/- THE YEAR 2015-16.
ANNEXURE II	-	TRUE COPY OF THE COUNTER FOIL SHOWING THE REMITTANCE OF RS.1,000/- THE YEAR 2016-17.
ANNEXURE III	-	TRUE COPY OF THE COUNTER FOIL SHOWING THE REMITTANCE OF RS.1,000/- THE YEAR 2017-18.
ANNEXURE IV	-	TRUE COPY OF THE CIRCULAR 8925/M3/2008 DATED 20/05/2009 OF THE DIRECTOR OF MINING AND GEOLOGY.