

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH AT NAGPUR

CIVIL WRIT PETITION NO.7128/2016

PETITIONER : M/s Ajanta Minerals, a registered Partnership firm, bearing Registration No.NGP-10960/2008-09, through its Managing Partner : Shri Rajendra Purushottam Tank, aged 52 years, Registered office at 16, Indira Devi Town, Wathoda, Nagpur.

...VERSUS...

RESPONDENTS : 1. The State of Maharashtra, through its Secretary, Department of Industries, Energy and Labour, Mantralaya, Mumbai 400 032.

INTERVENER 2. Gulam Ashi S/o Daud Khan Pathan Aged about 49 years, Occu. Proprietor Ajanta Minerals, R/o Ambedkar Ward, Tah. Kurkheda, Distt. Gadchiroli – 441209.

(Added as per court's order Dt. 22.1.18)

(Amendment Carried out as per Court's order dtd. 22/01/18)

Mr. Ram S. Parsodkar, Advocate for petitioner

Mr. Neeraj R. Patil, AGP for respondent no.1

Mr. Arjun Vinod Bobde, Advocate with Mr. Sarthak Bhatia with Ms Shubhangi Ajay Jadhao and Ms Sarina Shaikh, Advocates for respondent no.2

CORAM : **SUNIL B. SHUKRE AND**
AVINASH G. GHAROTE, JJ.

Judgment reserved on : 09/03/2021
Judgment pronounced on : 25/03/2021

J U D G M E N T : (P E R : A V I N A S H G . G H A R O T E , J .)

1. The petition as initially filed, sought a direction to the respondent no.1 to take a decision forthwith in respect of grant of mining lease and its execution before 11/1/2017 in favour of the petitioner – M/s Ajanta Minerals, a registered partnership Firm. The proceedings before the State Government came to be decided by the impugned order dated 8/6/2017, whereby, the Minister Industries, Mining State of Maharashtra, in exercise of the power conferred upon the State Government by Section 10-A (2) (c) of the Mines and Minerals (Development and Regulation) Act, 1957 (for short, “The MMDR Act, 1957, hereinafter), and Rule 8 (2) of the Minerals (Other Than Atomic And Hydrocarbons Energy Minerals) Concession Rules, 2016 (for short, “the MC Rules, 2016”, hereinafter), has decided that M/s Ajanta Minerals a proprietary Firm, is entitled for grant of mining lease over an area of 65 hectares in village Sohale, Tq. Korchi, District Gadchiroli, subject to the result of the present petition, consequent to which the petition has been amended to challenge the order dated 8/6/2017. Further direction has been sought to conduct an enquiry through the CID to investigate in respect of prospecting license of M/s Ajanta Minerals,

dated 10/10/2005, which is claimed to be in custody of the respondent no.2.

2. The following position is not disputed :-

(A) That M/s Ajanta Minerals, was the proprietary concern of the respondent no.2, who had applied for its registration as a proprietary Firm on 13/11/1995, and was accordingly granted a provisional certificate of registration as a proprietary Firm.

(B) The respondent no.2 as a proprietor of “Ajanta Minerals” had applied for prospecting license on 9/12/1998.

(C) The Grampanchayat had granted NOC/ permission for mining the land in favour of the proprietorship concern on 5/10/1999.

(D) All communications till 31/12/2004, in respect of the prospecting license in favour of M/s Ajanta Minerals a proprietary concern, were between the various authorities and the respondent no.2 alone.

3. Mr. Ram Parsodkar, learned Counsel for the petitioner takes exception to the finding as rendered in the impugned order,

that it is the proprietary Firm M/s Ajanta Minerals and not a partnership Firm Ajanta Minerals, who is entitled for grant of mining lease.

4. It is the contention of Mr. Ram Parsodkar, learned Counsel for the petitioner, that a partnership came into existence, on 1/8/2005, whereunder, the proprietorship concern M/s Ajanta Minerals, came to be converted into a partnership Firm, with the respondent no.2, along with (a) Shri Ghanshyam Wasudeorao Tijare and (b) Shri Madhukar Sheshraoji Kale as partners, wherein, the contribution of the respondent no.2, as a share capital to the Firm, was the prospecting license, issued in the name of the proprietary concern M/s Ajanta Minerals and the benefits arising out of it. The said partnership Firm came to be reconstituted on 1/8/2005 by adding Shri Rajendra Purushottam Tank, as a partner and the partnership Firm came to be registered on 10/2/2009, with the Registrar of Firms. The partnership is at Will and is still continuing. He further submits that in anticipation to the partnership Firm M/s Ajanta Minerals being formed, a power of attorney, came to be executed by the respondent no.2, in favour of one of the partners of

the Firm, namely, Shri Ghanshyam Tijare on 11/12/2004, in pursuance to which it is contended, that the said attorney, initiated proceedings, for change of the constitution of the Firm from proprietorship to partnership, in the prospecting license, with the authorities under Rule 62 of the Mineral Concession Rules, 1960 (for short "the MC Rules, 1960" hereinafter), for which, he relies upon the communication dated 22/9/2005, addressed by Shri Ghanshyam Tijare as an attorney of the respondent no.2, to the Mining Officer, on the subject of addition of the partner's name in the agreement/deed/order No.piv-gt/31/05/2361 dated 14/7/2005 prospecting license. The partnership-deed as well as power of attorney, were enclosed with this communication. It was also mentioned that the reference numbers Ajanta Minerals dated 8/9/2005 and 18/9/2005, which were wrongly submitted, be assumed to be cancelled. It was further mentioned, that the letter dated 8/8/2005 by the DGM in para 5 had stated that the lease-deed agreement, includes all the names of the partners which are necessary to be added in the lease-deed agreement Form No.F of the prospecting license under the MC Rules, 2016 (Rule No.15 Sub-Rule 2). This communication is signed by Shri Ghanshyam

Tijare, as the power of attorney of the respondent no.2. He further invites our attention to the Form-I dated 25/4/2006 to contend, that in the said Form-I, the status of the applicant is shown as partnership Firm in existence w.e.f. 1/4/2005, which was notarized on 19/12/2005 with the above named persons, shown as partners. According to him, this form which is dated as 7/4/2006 on the last page is signed by the present respondent no.2 and therefore the same would amount to an admission that the mining lease now ought to be considered to be executed in name of the partnership Firm. He submits that this document has been received by the petitioner under the Right to Information Act and therefore, is an authentic document. Learned Counsel further invites our attention to the communication dated 3/12/2010, issued by the Regional Controller of Mines, addressed to M/s Ajanta Minerals, on the subject of approval of mining plan, whereby approval has been accorded, in the name of M/s Ajanta Minerals, a partnership Firm and not a proprietary concern of the respondent no.2. He further places reliance upon the communication dated 1/8/2005 by the Mineral Officer, and the Model Form of prospecting license, Form-F annexed thereto to contend that the same, was in the name of the

Firm as indicated from the first page of the Form-F, which recorded the status of M/s Ajanta Minerals as partnership Firm registered under the Indian Partnership Act, 1932. He further submits that the Model Form-F was accepted by the Mining Officer. He further draws our attention to the communication dated 14/7/2005, issued by the Directorate of Geology and Mining upon the subject of grant of prospecting license to M/s Ajanta Minerals, enclosing the order granting the prospecting license and contends that the same also was issued to the partnership Firm and not to the proprietary concern of the respondent no.2. He further submits, that the consent of the department for change of constitution of the Firm is not required, as once an application under Rule 62 of the MC Rules, 1960 is made, it is deemed to be accepted. He further submits that the prospecting license, dated 10/10/2005, in which the respondent no.2, is shown to have signed as a Proprietor, is a tampered and forged document, and ought not to have been relied upon. He further submits that there were three different prospecting license's on record, one at record page 78, the Model Form for prospecting license in Form-F, in which it is the partnership Firm M/s Ajanta Minerals is shown as the licensee; the second and third at record

page 2/419 and 3/520, in both of which licensee is M/s Ajanta Minerals and has been shown as a proprietary concern of the respondent no.2, who has signed the Form-F as the Proprietor of Ajanta Minerals. He submits that there is tampering of the documents at the behest of the respondent no.2 and therefore, an enquiry ought to be directed, in this regard as to the correctness of the the prospecting license in Form-F for which he invites our attention to the order of this Court dated 22/1/2018, by which three files in custody of the Mining Officer were taken in custody by this Court and directed to be kept with the Registry, under seal as indicated therein. He further submits that the mandate has since lapsed and even if the petition is dismissed, the respondent no.2 cannot get anything. He therefore submits that the impugned order, which is based upon a finding that the prospecting license was granted to the respondent no.2 as the proprietor of M/s Ajanta Minerals is clearly not based upon the factual position as well as is contrary to the Rules and Regulations in this regard and specifically Rule 62 of the MC Rules, 1960 by which there is a deemed permission for change of constitution and therefore cannot be sustained. Mr. Ram Parsodkar, learned Counsel for the petitioner

places reliance upon the following judgments.

(A) AIR 1966 Supreme Court 1300 (Addanki Narayanappa and another Vs. Bhaskara Krishnappa and others)

(B) (2008) 11 SCC 413 (Som Lal Vs. Vijay Laxmi and others)

(C) (2011) 4 SCC 275 (Milind Shripad Chandurkar Vs. Kalim M. Khan and another)

(D) (2009) 1 SCC 689 (State of Uttar Pradesh and another Vs. Jagdish Sharan Agrawal and others)

5. Mr. Neeraj Patil, learned Assistant Government Pleader appearing for the respondent no.1, submits, that the prospecting license was granted to M/s Ajanta Minerals, as a proprietary concern of the respondent no.2, by order dated 14/7/2005. He submits that the petitioner – Firm, as a partnership concern was registered on 10/2/2009, in view of which, the partnership Firm was not in existence on 14/7/2005, when the prospecting license was granted. He further submits that after carrying out prospecting work, the proprietary concern M/s Ajanta Minerals had applied for mining lease on 25/4/2006, in Form-I and the respondent no.1 has recommended the grant of such mining lease, consequent to which, the Government of India, Ministry of Mines has accorded its

approval on 22/12/2008 under Section 5 (1) of the MMDR Act, 1957, in terms of which, a letter of intent has been issued by the respondent no.1, on 12/1/2009, for grant of mining lease to M/s Ajanta Minerals a proprietorship concern. He further submits that since the Central Government had already granted its approval under Section 5 (1) of the MMDR Act, 1957 on 22/12/2008 and the LOI was issued on 19/1/2009, therefore in terms of Section 10-A (2) (c) of the MMDR Act, 1957, as amended in 2015, the proprietary concern M/s Ajanta Minerals continued to remain eligible for grant of mining lease as a preferential right was created in terms of Section 11 (1) of the MMDR Act, 1957. He further submits that the application for mining lease was received on 25/4/2006, on which date M/s Ajanta Minerals as a partnership Firm was not registered at all, and therefore, it cannot claim to be the recipient of the mining lease. He further contends, that the allegations about fabrication of documents could not have been decided by the respondent no.1. Mr. Neeraj Patil, learned AGP further invites our attention to the fact that the present petitioner as a partnership Firm, along with three of its partners, namely, (a) Shri Rajendra Purushottam Tank, (b) Shri Ghanshyam Wasudeorao Tijare

and (c) Shri Madhukar Sheshraoji Kale had on 19/12/2011 filed a civil suit bearing R.C.S. No.9/2011, for permanent injunction, against the present respondent no.2, wherein the same contentions of the partnership Firm, having made an application for mining lease on 25/4/2006 under the strength of the partnership-deed dated 1/8/2005 were made and it was stated, that the Central Government, by a communication of 2009 had granted approval for lease in favour of the plaintiff-Firm, which was being opposed by the present respondent no.2 (defendant therein) with an intention to defraud the partners of the partnership Firm M/s Ajanta Minerals. It was further stated that the plaintiff therein had invested nearly Rs.50,000/- for establishing the business and obtaining the mining lease, collecting machineries etc., however, because of the resistance of the present respondent no.2 (defendant therein) the Firm was unable to participate in the business of partnership and therefore, a claim was made for grant of a permanent injunction, to permanently restrain the defendant therein (present respondent no.2) from obstructing the plaintiff-Firm in participating in the business of M/s Ajanta Minerals over the land of Khasra No.121/1 Mouza Sohale, with a further direction to the defendant no.2 therein to give

all accounts of the business of mining being conducted on the said property to the partnership Firm and also to grant necessary profits accrued in the business of partnership within the stipulated time. A further relief was sought in the nature of the direction to the defendant therein (respondent no.2, here) not to obstruct the plaintiff-Firm, their men and machineries from participating in the excavation of iron ore. In this suit, an application for temporary injunction filed was rejected, which was not challenged and the suit itself came to be dismissed in default for want of prosecution on 23/7/2013. He further submits that under Section 11 (1) of the MMDR Act, 1957, there was a bar created in grant of prospecting license-cum-mining lease, without any auction, which however, in the present case will not be applicable, in view of provisions of Section 10-A of the MMDR Act, 1957.

6. Mr. Arjun Bobde, learned Counsel for the respondent no.2 by inviting our attention, to Rule 14 (1) (vii) of the MC Rules, 1960, contends that there is a prohibition upon transfer of the prospecting license, except with the previous sanction of the State Government, which was conspicuous by its absence. He further

invites our attention to the two provisos thereto, delineating the requirements for grant of such sanction, none of which according to him, stood complied in the present matter. Learned Counsel further invites our attention to Rule 15-A of the MC Rules, 1960, to contend that even where a sanction has been granted for transfer of the prospecting license, a transfer-deed in Form-P has to be executed within three months from the date of the consent or such further time as may be allowed in this regard, which also is absent. By inviting our attention to Form-P, the Model Form for transfer of prospecting license, learned Counsel contends, that when the transferee is a registered Firm, the names and addresses of all the partners carrying on business in partnership under the Firm name had to be so entered in Form-P, which again is not there. He further submits that Rule 62 of the MC Rules, 1960 operates in a different situation altogether in as much as Rule 62 merely contemplates, the change of name, nationality etc. to be intimated in respect of an applicant for, or the holder of, a prospecting license or a mining lease to the State Government within sixty days of any change that may take place in his name, nationality or other particulars mentioned in the relevant forms and has no applicability in the case

of a transfer. By inviting our attention, to the application for mining lease dated 25/4/2006, he contends that the status of the applicant therein, has been shown as a proprietorship concern of the respondent no.2 and not as a partnership Firm. He further invites our attention to the affidavit dated 29/12/2005 sworn in this regard, which is in the individual name of the respondent no.2, in which the PAN number as shown therein, was the individual PAN number of the respondent no.2 and not otherwise. He submits that the application for mining lease, as filed on record by the petitioner dated 25/4/2006, claiming that the same was in the name of the partnership Firm, is a document, which has not been signed by the respondent no.2, and the signature on the last page of the same, was clearly a fabricated one. He further contends, that though the first page of Form-I bears a date 25/4/2006, the last page of the said document bears the date 7/4/2006. That apart the same is also not signed by the Collector and thus cannot be treated as a document executed, but was merely the Form in the format required. He further submits that neither Form-D which is the receipt of application of prospecting license/mining lease nor the communication dated 7/4/2006, submitting the mining documents,

indicate that they were done by the partnership Firm. He further submits, that the mining plan, as submitted, by the respondent no.2 had been approved by the Regional Controller of Mines on 3/12/2010 and the introduction to the approved mining plan, also indicates, that M/s Ajanta Minerals was a proprietary concern. He submits that the entire communication, with the various authorities, throughout, has been done by the respondent no.2. He further submits, that an enquiry into the complaint of a similar nature was made by the Collector, Gadchiroli, who by his report dated 2/5/2016 (pg.3/597), had submitted, categorically, that M/s Ajanta Minerals was a proprietary concern of the respondent no.2, which was registered as such on 13/11/1995 with the District Industries Centre, who had in 1998 applied for the prospecting license, and was granted the same on 14/7/2005, agreement in respect of which was executed on 10/10/2005, in Form-F, which was signed by the respondent no.2 as a proprietor of M/s Ajanta Minerals and the Collector, Gadchiroli, and the lease was also executed in the name of the proprietorship concern on 22/12/2008. Mr. Arjun Bobde, learned Counsel for the respondent no.2 further invites our attention to the partnership-deed dated 1/8/2005 to contend that

the stamp paper for the same is dated 9/3/2005, whereas the same is notarized on 19/12/2005 and as such was affected by Section 52 (B) of the Maharashtra Stamp Act, as the stamp was used after six months. By inviting our attention to Rule 8 (1) (a) (b) of the MC Rules, 2016, Mr. Arjun Bobde, learned Counsel for respondent no.2 contends that the requirements thereof were already complied with, and therefore, it was the obligation of the respondent no.1, to issue an order for grant of mining lease under Sub-Rule 2 of Rule 8 of the relevant MC, Rules, 2016, and therefore, the contrary contention that the mandate has lapsed, was without any merits whatsoever.

7. The basic crux of the matter lies in three things:-

- (a) whether a partnership was constituted;
- (b) whether the prospecting license/mining lease and its benefits were brought in by the respondent no.2 as his share in the partnership Firm; and
- (c) whether there was a transfer of the prospecting license/mining lease, in favour of the partnership Firm, as required by the provisions of Rule 14 of the MC Rules, 1960.

8. Though it is contended by learned Counsel for the petitioner that a partnership was formed on 1/1/2005, with (a) the defendant no.2, (b) Shri Madhukar Sheshraoji Kale and (c) Shri Ghanshyam Wasudeorao Tijare as partners, no such partnership-deed dated 1/8/2005, has been placed on record to substantiate this plea. The certificate of registration of M/s Ajanta Minerals placed on record, reflects the partnership Firm being created on 1/8/2005, for the registration of which, the form, which was submitted, is dated 19/12/2005 and the entry of the partnership Firm, was taken in the register of Firms on 10/2/2009. The deed of partnership which is placed on record is dated 1/8/2005. Though it is contended by Mr. Arjun Bobde, learned Counsel for respondent no.2, that this partnership-deed dated 1/8/2005 was written on an invalid stamp paper as the stamp paper is dated 9/3/2005 and the same was notarized on 19/12/2005, whereas Section 52 B of the Maharashtra Stamp Act requires a stamp paper to be used within six months from the date of its issuance, we are not impressed with this contention, for the reason that though the partnership-deed, may have been notarized on 19/12/2005, however, the same has been executed on 1/8/2005,

which is within a period of six months from the date of purchase of the stamp paper on 9/3/2005. The contention therefore, in this regard, is rejected.

9. A perusal of the partnership-deed dated 1/8/2005, indicates that there is a mention therein, that the parties to the partnership-deed intend to start a new business of mining and raising of minerals and iron ores, trading in minerals, owing leases of mineral bearing land under the name and style of M/s Ajanta Minerals, and the opening paragraph of the deed of partnership makes a mention of the prospecting license dated 14/2/2005 in the name of M/s Ajanta Minerals, on Khasra No.121/1, 65 hectares, at post Kurkheda, Tq. Korchi, village Sohale, District Gadchiroli. The operative parts of the terms of the deed of partnership do not indicate, that the prospecting license issued in name of the defendant no.2, was brought in by him as his share to the partnership. This is clarified from term no.5, in which the share capital of the partners is listed, the total of which is a sum of Rs.50,000/- in which the share capital of the defendant no.2 is shown as Rs.12,500/-. Further there is no term in the entire

partnership-deed, from which it can be inferred, that the prospecting license, or the consequent benefits arising out of the same, were brought in by the defendant no.2, as his share in the capital of the Firm, or his contribution and that the benefits arising therefrom were to be shared in the proportion of profit and loss as mentioned in term no.7 of the partnership-deed. The entire partnership-deed is a computerized document. There is however a handwritten term No.14-A on the last page of the deed, which states “all applied mines in name of all partners till date in Gadchiroli Dist. shall includes in this partnership-deed”. Though during the course of the argument, no contentions were advanced on this handwritten term no.14-A, and stress was only laid on the opening paragraph of the deed which made a mention of the prospecting license dated 14/7/2005, it is perhaps this term no.14-A, which can be alone invoked by the petitioner to contend that the prospecting license was brought in by the defendant no.2 in the partnership Firm. However it is worthwhile to note that the execution of this deed of partnership dated 1/8/2005 is disputed by the respondent no.2, who has throughout contended that the prospecting license and all subsequent actions, documents, benefits, have been applied for and

issued and granted in favour of a proprietary concern of the defendant no.2 bearing the name “M/s Ajanta Minerals”. Such opposition, is not only reflected from the submissions of the respondent no.2, but the actions of the respondent no.2, in pursuance to the grant of the prospecting license dated 10/10/2005 in the Model Form-F; the application for mining lease dated 25/4/2006 and the further communications in that regard, all of which, are in the name of M/s Ajanta Minerals, which is claimed and recognized by the concerned authorities as well as the respondent no.1 to be a proprietary concern. It is further material to note that the petitioner claiming itself to be a partnership Firm had filed R.C.S. No.9/2011, against the present respondent no.2, which was a suit for permanent injunction, wherein, the same plea, that the petitioner was a partnership Firm, of which the respondent no.2 was a partner and benefits arising out of the prospecting license were the subject matter. It would be material to reproduce the reliefs as claimed in R.C.S. No.9/2011, which are as under :-

“(a) It is, therefore, most humbly and respectfully prayed that this Hon'ble Court may be pleased be directed to give all the accounts of the business of mining being conducted

on the suit property to the plaintiff Firm and also to grant necessary profits accrued in the business of partnership within the stipulated time.

(b) direct defendant not to obstruct the plaintiff Firm, their men and machineries from participating in the excavation of iron ore from the suit property, by granting decree of permanent injunction.

(c) saddle the costs on the defendant.

(d) grant any other relief as this Hon'ble Court deems fit, just and proper considering the facts and circumstances of the case, in the interest of justice.”

10. R.C.S. No.9/2011, was filed on 19/12/2011, in the Court of Civil Judge, Junior Division, Kurkheda, District Gadchiroli. An application for temporary injunction under Order 39 Rules 1 and 2 of the C.P.C. was also filed. The present respondent no.2, who was the sole defendant in R.C.S. No.9/2011, had opposed the maintainability of the suit as well as the plea that there was any partnership formed vis-a-vis the prospecting license and the benefits arising from its successful culmination by the execution of a mining lease. It was the specific contention of the present respondent no.2 in R.C.S. No.9/2011 that M/s Ajanta Minerals was an exclusive proprietary concern of the respondent no.2 and it was the respondent no.2 alone, who had applied for the prospecting license

and had prosecuted the same throughout. The application for temporary injunction came to be rejected on 29/3/2012, holding that prima facie it was difficult to hold that a clear-cut license was granted in favour of the plaintiff-Firm. This order of rejection of the application for temporary injunction, does not appear to have been challenged by the petitioner. It is further material to note that R.C.S. No.9/2011, itself came to be dismissed in default, due to want of prosecution on 23/7/2013, as in spite of repeated chances no evidence was led, and thereafter, no attempts whatsoever have been made by the present petitioner to get it restored. It is further material to note that though the petitioner, contends that the Model Form for prospecting license in Form-F, filed at Annexure-xvi to the petition indicates, that M/s Ajanta Minerals, is a partnership Firm, however, the prospecting license in Model Form-F which is actually executed, between the Collector, Gadchiroli and M/s Ajanta Minerals, as filed by the respondent no.2, dated 10/10/2005 would indicate that the prospecting license has been executed in favour of M/s Ajanta Minerals, proprietary concern of the respondent no.2.

11. It is thus apparent that the very existence of M/s Ajanta Minerals as a partnership Firm, is a matter of dispute between the petitioner on the one hand, who claims it to be a partnership Firm and on the other hand, the respondent no.2, who claims it to be his proprietary concern. Though the certificate of registration of the Firms as issued by the Registrar of Firms, shows the partnership Firm M/s Ajanta Minerals having four partners including the present defendant no.2, which has been registered in the register of Firms w.e.f. 10/2/2009 in respect of a partnership Firm which is stated to have come into existence on 1/8/2005, since the execution of the same itself, is disputed by the defendant no.2, any decision as to whether a partnership Firm really came into existence, whether the prospecting license and its consequent benefits were brought in by the respondent no.2 in the partnership Firm and were made the subject matter of the business of the partnership Firm, are all questions, which are disputed and which cannot be decided by this Court in its writ jurisdiction under Article 226 of the Constitution of India, as the decision of the same, would require evidence to be led in an adversarial litigation before the Civil Court.

12. That apart, Mr. Arjun Bobde, learned Counsel for the respondent no.2, is correct in his submission, based upon Rule 14 and 15-A of the Mineral Concession Rules, 1960, the relevant portions of which for the sake of ready reference, are reproduced below :-

***“Rule 14. Conditions of a prospecting license.-** (1) Every prospecting license granted under these rules, shall, in addition to any other conditions, that may be specified therein, be subject to the following conditions, namely :-*

.....

(vii) the licensee shall not, except with the previous sanction of the State Government, transfer his license :

Provided that no prospecting license shall be transferred to any person who has not filed an affidavit stating that he has filed an up-to-date income-tax returns and paid the income-tax assessed on him and paid the income-tax on the basis of self-assessment as provided in the Income-tax Act, 1961 (43 of 1961), and except on payment to the State Government of a fee of five hundred rupees :

Provided further that the State Government shall not grant its sanction for the transfer of prosecuting license unless the transferee has accepted all the conditions and liabilities which the transferor has in respect of such prospecting license:

Provided also that the State Government may, by order in writing after providing the licensee the opportunity of being heard, cancel such prospecting license at any time if the licensee has, in the opinion of the State Government, committed a breach of this clause or rule 15-A.”

Rule 15-A. *Where on an application for grant of sanction to transfer the prospecting license under clause (vii) of sub-rule (1) of rule 14, the State Government has granted sanction for transfer of such license, a transfer deed in Form P, or a form as near thereto as possible shall be executed within three months of the date of the consent, or within such further period as the State Government may allow in this behalf.”*

Even presuming that there was a partnership Firm and the prospecting license and its benefits due to its successful culmination in execution of a mining lease, were brought into such partnership Firm, however, in so far as the authorities are concerned, the same would be of no consequence in light of the language and requirement of Rule 14 (1) (vii) and Rule 15-A of the MC Rules, 1960, as there was no transfer of the prospecting license in the name of the partnership Firm. A perusal of Rule 14 (1) (vii) of the MC Rules, 1960, indicates, that the transfer of a prospecting

license is not permissible without the previous sanction of the State Government. The first two provisos to Rule 14 (1) (vii), lay down the requirements for such transfer. Further Rule 15-A of the MC Rules, 1960 mandates that in case a sanction to transfer a prospecting license, has been granted, a further transfer-deed, in Form-P has to be executed within three months from the date of the sanction to transfer or such further period as may be allowed in this regard. Thus, merely contending that a partnership Firm had come into existence and the prospecting license and its benefits, were brought into the partnership Firm, are of no benefit to the petitioner, for the reason, that any such plea, would clearly amount to a claim for the transfer of the prospecting license and the benefits arising therefrom, thereby attracting the mandate of Rule 14 (1) (vii) of the MC Rules, 1960 of the previous sanction of the State Government and of Rule 15-A, of the execution of a transfer-deed, evincing the transfer of such prospecting license, in Form-P. A perusal of Form-P further indicates, that it is a Model Form for transfer of prospecting license, in which, in case the transferee, is a registered Firm, the names and address of all the partners carrying on business in partnership in name and style of the Firm, have to be entered. In the

instant matter, though it is contended by Mr. Ram Parsodkar, learned Counsel for the petitioner that there was a transfer of the prospecting license, no such sanction of the State Government, as required under Rule 14 (1) (vii) of the MC Rules, 1960, nor the transfer-deed in Model Form-P, as required under Rule 15-A of the MC Rules, 1960 have been placed on record. In fact, the petitioner has not even come to the Court with a plea, that there ever was transfer, in consonance with Rule 14 (1) (vii) and 15-A of the MC Rules, 1960.

12.1. The mere filling up of the Model Form of prospecting license-Form-F, wherein M/s Ajanta Minerals is shown as a partnership Firm, would for the above reason not be of any effect whatsoever. That apart a prospecting license was duly executed between the respondent no.2, as proprietor of M/s Ajanta Minerals and the Collector Gadchiroli on 10/10/2005, after due approvals as required in that regard, which would indicate that even if any request as indicated by the letter dated 22/9/2005 was made, the same was not acceded to by the State Government.

12.2. The contention of Mr. Ram Parsodkar, learned Counsel for the petitioner relying on Rule 62 of the MC Rules, 1960 that since an application was made by the partnership Firm, on 22/9/2005, requesting the Mining Officer, District Collector Office, Gadchiroli, for insertion of all the partners' names in agreement, deed, order dated 14/7/2005 of the prospecting license, by enclosing the partnership-deed and power of attorney, the same amounted to an acceptance of the change of constitution of the Firm from a proprietary concern to a partnership Firm, as nothing was required further to be done once the intimation was given, has to be tested upon the language of Rule 62 of the MC Rules, 1960, which is reproduced as under :-

“Rule 62. Change of name, nationality, etc., to be intimated – (1) An applicant for, or the holder of, a reconnaissance permit, a prospecting license or a mining lease shall intimate to the State Government within sixty days any change that may take place in his name, nationality or other particulars mentioned in the relevant Forms.

(2) If the holder of a reconnaissance permit or a prospecting license or a mining lease fails, without sufficient cause, to furnish the information referred to in sub-rule (1), the State Government may determine the reconnaissance permit or prospecting license or mining lease, as the case may be :

Provided that no such order shall be made without giving the permit holder or the licensee or the lessee, as the case may be, a reasonable opportunity of stating the case.”

A perusal of Rule 62 (1) of the MC Rules, 1960 indicates, that wherever a change takes place in the name, nationality, or other particulars mentioned in the relevant forms, the applicant or the holder of a reconnaissance permit, a prospecting license or mining lease, has to intimate, such change to the State Government within 60 days of such change, and Rule 62 (2) mandates that failure to furnish such information about change gives the option to the State Government to determine the reconnaissance permit, a prospecting license or mining lease. Rule 62 and Rule 14 (1) (vii) r/w Rule 15-A of the MC Rules, 1960, operate in two different and distinct arenas. Whereas Rule 14 (1) (vii) r/w Rule 15-A of the MC Rules, 1960, specifically deals with the question of transfer of a prospecting license, requiring the previous sanction of the State Government therefor and execution of a transfer-deed in pursuance to such sanction in Form-P, Rule 62, on the other hand, merely requires any change of name, nationality or information in the reconnaissance permit, a prospecting license or

mining lease, to be intimated to the State Government. Rule 62 of the MC Rules, 1960, cannot by any stretch of imagination be held, to be a substitute or replacement of Rules 14 (1) (vii) and 15-A of the MC Rules, 1960. Rule 62, has nothing whatsoever to do with the transfer of the prospecting license in any manner whatsoever. Rule 62 merely requires the relevant information to be kept updated in the records and nothing else. Thus, the reliance upon Rule 62 of the MC Rules, 1960 by Mr. Ram Parsodkar, learned Counsel for the petitioner to contend that the same envisages transfer of the prospecting license, merely on intimation of the changes as contemplated therein, is clearly misplaced. Any intimation as may be required by Rule 62 of the MC Rules, 1960, cannot have the effect of transferring of the prospecting license and any such transfer, has to be strictly in consonance with the requirements and in accordance with Rule 14 (1) (vii) and 15-A of the MC Rules, 1960. It is thus apparent that in absence of any document envisaging the fulfillment of the requirements of Rule 14 (1) (vii) and 15-A of the MC Rules, 1960, even if it is presumed that there was a partnership in existence to which the prospecting license and its benefits were brought in by the respondent no.2, the same in

absence of compliance with the requirements of Rule 14 (1) (vii) and 15-A of the MC Rules, 1960 would be of no avail and benefit to the petitioner in any manner whatsoever.

12.3. It is trite that when the Rules require transfer to be effected in a particular manner, the same ought to be effected strictly in consonance with the Rules and not otherwise. Thus, admittedly, since there is nothing on record to indicate that the requirements of Rule 14 (1) (vii) and 15-A of the MC Rules, 1960 have been complied with, the plea, that there was a transfer of the prospecting license and the benefits accruing thereto in favour of the partnership Firm M/s Ajanta Minerals, presuming that it was so created, cannot be accepted and is hereby rejected.

13. Though much reliance has been placed by Mr. Ram Parsodkar, learned Counsel for the petitioner on the application for mining lease in Form-I dated 25/04/2006 and it being signed by respondent no.2, the same on its own, would not be of any significance, for the reason that presuming the prospecting license and its benefits having been brought into the partnership Firm, the mere making of an application for grant of mining lease, of

its own, does not confer any right upon the person making it for grant of a mining lease, as the grant of mining lease is after compliance of the conditions necessary for grant of such lease, which admittedly had not been done by the partnership Firm. A perusal of the terms of the prospecting license in Form-F dated 10/10/2005, indicates that a preferential right was created in the respondent no.2 for grant of mining lease as indicated by term nos.3 to 5 in part iv of the prospecting license, in case all the terms and conditions of prospecting license stood satisfied and it is in pursuance to this term that the respondent no.2 had applied for a mining lease to be granted in Form – I, which benefit could not have accrued to the petitioner, unless the prospecting license was transferred in favour of the partnership Firm, in accordance with Rules 14(1) (vii), and 15-A of the MC Rules, 1960 and the conditions of transfer as enumerated in term no.1, part – iv of the prospecting licence in Form -F.

That apart, the execution of this document itself is disputed by the respondent no.2 on the ground that it is a tampered document, created by changing the first page of Form – I by replacing the details of a proprietorship concern with that of a

partnership Firm, which dispute again is something which would require evidence.

14. The reliance upon the communication dated 14/07/2005 by the Director, Directorate Geology and Mining, Government of Maharashtra, Nagpur to M/s Ajanta Minerals and the communication dated 03/12/2010 addressed by the Regional Controller of Mines to M/s Ajanta Minerals is also of no assistance to the petitioner, for the reason that these communications nowhere depict that they were addressed to the partnership Firm M/s Ajanta Minerals, but are addressed merely to M/s Ajanta Minerals. In fact, the letter dated 14/07/2005 is a communication enclosing the order dated 14/07/2005, whereby the prospecting license was sanctioned in favour of M/s Ajanta Minerals in pursuance to the application dated 09/12/1998 which admittedly was made by the respondent no.2 as a proprietor of M/s Ajanta Minerals. The other letter dated 03/12/2010 communicates the approval of the Mining plan and it is not the case of the petitioner that the partnership Firm had prepared and submitted the Mining plan, on the contrary, the first page of Mining plan as enclosed with the letter dated 19/01/2009 shows

that the Mining plan was prepared by M/s Ajanta Minerals, a proprietary concern.

15. In fact, the undated power of attorney claimed to be executed by the respondent no.2 in favour of Mr. Ghanshyam Tijare, who had made the application dated 22/9/2005, intimating the Mining Officer about the constitution of the partnership Firm, did not confer or contain any power to apply for any change of name or for that matter transfer of the mining lease, in favour of anyone whomsoever, as is apparent from a perusal of the powers as conferred under terms (2) to (10) therein and in view of the settled position of law that the powers contained in the power of attorney, have to be strictly construed, it was also not permissible for Mr. Ghanshyam Tijare, to have made the application dated 22/9/2005 to the Mining Officer.

16. Though Mr. Ram Parsodkar, learned Counsel for the petitioner has placed reliance upon *Addanki Narayanappa* – which holds that once a property is brought into the partnership Firm, it ceases to be the exclusive property of the person who brought in

and becomes the property on the partnership in which all the partners would have interesting proportion to their share; ***Som Lal*** – which holds that when the mandate of the legislature is categorically clear and admits of no two opinions, the Courts should be very slow to interfere with the mandate of the legislature unless there are compelling reasons for doing so; ***Milind Shripad Chandurkar*** - which on facts, holds that the appellant therein had failed to prove any nexus or connection by adducing any evidence, whatsoever, worth the name with the Firm and therefore could not said to be the proprietor of the Firm and ***Jagdish Sharan Agrawal*** - holding that a dismissal for default is not a decision on merits and cannot operate as *res judicata* (supra), and we have gone through them, however, in light of the admitted position that the application for prospecting license, was filed by the respondent no.2 as the proprietor of M/s Ajanta Minerals and what we have held regarding absence of transfer of the prospecting license, due to non-compliance of the requirements of Rule 14 (1) (vii) and 15 -A of the MC Rules, 1960 and the dispute raised about the existence of the partnership Firm, we do not feel, that the judgments are of any assistance to the plea as canvassed by learned Counsel for the petitioner.

17. The position which thus emerges is that the respondent no.2, as of date, is clearly entitled, to the benefits of the prospecting license and the mining lease, as proprietor of M/s Ajanta Minerals, and the findings as rendered in the impugned order dated 8/6/2017 cannot be faulted with.

18. The issue whether, the mandate has lapsed or not, is not the subject matter of the present petition, as no reliefs in that regard have been claimed in the present petition and therefore, we refrain from making any comment upon the same, as it is a matter squarely between the respondent no.2 and the State Government.

19. In so far as the relief claimed, for direction to conduct an inquiry in respect of the prospecting license dated 10/10/2005, it is hardly material, as to whether in whose custody the same is, for nothing turns around it, in absence of sanction to transfer as mandatorily required by Rule 14(1)(vii) read with Rule 15-A of the MC Rules, 1960 and the prayer made in this regard cannot be granted.

20. The writ petition, therefore, in view of what we have said above, is dismissed.

Rule stands discharged. No order as to costs.

(AVINASH G. GHAROTE, J.)

(SUNIL B. SHUKRE, J.)

Wadkar/Sarkate