**REPORTABLE**

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 4823 OF 2013
(Arising out of SLP(C) No. 20180 of 2010)

K. Guruprasad Rao ....Appellant

versus

State of Karnataka and others ....Respondents

**J U D G M E N T**

**G.S. SINGHVI, J.**

1. Leave granted.

2. With the hope of their immortalization, several Emperors, Kings and other rich people got built temples, churches, mosques and other buildings in different parts of the world including India. Many of these structures are not only marvels of architecture, but also represent the culture and heritage of the particular place and period. With the passage of time, these structures acquired the status of historical monuments, the preservation and protection of which has become a herculean task for successive generations.

**Legislations in other countries**

3. The issue of preservation and protection of ancient and historical monuments has been a matter of concern for the Governments and private individuals alike. In his work titled Preserving Archaeological Sites and Monuments, Henry Cleere, World Heritage Coordinator, International Council on Monuments and Sites, Paris and Visiting Professor, Institute of Archaeology UCL, London has mentioned that the first law on the subject was enacted in Sweden in 1666 and professional agencies were set up to implement the same. Several other countries enacted similar legislative instruments in 17th and 18th centuries. The United Kingdom enacted first Ancient Monuments Protection Act in 1882. France did so in 1913. The earliest Japanese legislation, the Law for the Preservation of Ancient Temples and Shrines, was enacted in 1897 and the United States waited until 1906 before its Federal Antiquities Act came into force. Their pre-hispanic civilizations were highly symbolic for the cultural identities of the countries that emerged after the independence struggles in Latin America during the first half of the nineteenth century, just as its Hellenic past grandeur was the material expression of Greek national identity. It is therefore not surprising that preservation of the remains of these cultures was given a high priority by the new nations. In 1821, Mexico passed the first law to preserve and protect the country's archaeological heritage. In the same year Peru shook itself free from Spanish rule and in 1822 a Supreme Decree was published, forbidding

any trade in ancient relics.

4. By the outbreak of World War I in 1914 almost every European country (with the notable exception of Belgium) and most of the major countries around the world had some form of antiquities protection and preservation legislation. Legislation had also been introduced by European colonial powers in many of their overseas territories; in some cases, such as France, the metropolitan statutes were enforced in their colonies.

5. The Treaty of Versailles saw more new nations being created in Europe, and here once again preservation legislation was introduced soon after their constitutions had been approved, usually based on the systems of the major countries such as Austria-Hungary from which they had been formed.

6. The inter-war period saw legislative protection being progressively amended and expanded in many parts of the world. New antiquities laws were enacted in Denmark, Greece, and the United Kingdom in the 1930s. Two major statutes, covering the protection of the cultural and natural heritage respectively, were promulgated in Italy by the Fascist regime just before the outbreak of World War II; interestingly, both are still force in 2001.

7. The 1897 Japanese law was extended to all "national treasures" in 1929. The current legislation relating to the cultural heritage in Peru stems

from a basic law passed in 1929, and a 1927 law covers the cultural heritage of Bolivia.

8. The creation of the USSR and the introduction of a socialist constitution led to state ownership of all cultural property being declared in a fundamental law of October 1918. (Unlike the laws of countries emerging from colonial domination, this was motivated for ideological reasons rather than in the interests of cultural identity.) The antiquities legislation of all the countries of the post-World War II socialist bloc of central and eastern Europe, as well as that of other socialist countries such as the People's Republic of China, North Korea, Vietnam, and Cuba, were modeled on the basic Soviet legislation.

9. The former colonial territories of Africa and Asia introduced protective legislation, often modeled on that of their former overlords, as soon as they achieved independence. The former British colonies in particular adopted similar laws, based on what became known as the "Westminster Model" constitution. The legislation of the British Raj was retained until improved legislative protection of the cultural heritage of India was introduced.

10. The second half of the twentieth century witnessed a continuous process of extending and improving heritage legislation across the globe. New or amended laws have been adopted by national legislatures of at least one country each year. At the international level work began between the two

World Wars by the League of Nations which resulted in organization by the United Nations Educational, Scientific and Cultural Organization (UNESCO) of two important international conventions designed to protect and preserve the cultural heritage, whether cultural, natural, or portable. Regional bodies such as the Council of Europe prepared similar conventions.

11. In 1972, UNESCO held the World Heritage Convention. One of the decisions taken in that convention was to appoint World Heritage Committee with the task of identifying the World Heritage Sites which were in danger. This was intended to increase the international awareness about the threat posed to certain World Heritage Sites and to encourage counteractive measures. In the case of natural sites, ascertained dangers include the serious decline in the population of an endangered or other valuable species or the deterioration of natural beauty or scientific value of a property by man-made activities such as logging, pollution, human settlement, mining, agriculture and major public works. Ascertained dangers for cultural properties include serious deterioration of materials, structure, ornaments or architectural coherence and the loss of historical authenticity or cultural significance. Potential dangers for both cultural and natural sites include development projects, armed conflicts, insufficient management systems or changes in the legal protective status of the property. In the case of cultural sites gradual changes due to geology, climate or environment can also be potential dangers.

12. In India, the legal regime dates back to 18th century. The Governments

of Bengal, Hyderabad, Madras and Mysore enacted the Bengal Regulation XIX of 1810, the Hyderabad Ancient Monuments Preservation Act VIII of 1337 Fasli, the Madras Regulation VII of 1817 respectively. In the 19th century, the Government of Mysore enacted the Mysore Ancient Monuments Preservation Act, 1925. The extent and reach of these statutes were obviously limited to the territories of the concerned States.

13. In 1898, the question of antiquarian exploration and research, and the necessity of taking steps for the protection of monuments and relics of antiquity within the territory controlled by the British, received the attention of the then Government. After consulting the Local Governments, the competent legislature enacted the Ancient Monuments Preservation Act, 1904 (for short, 'the 1904 Act'). The anxiety of the Government to protect monuments which were under its control and also those which were in the hands of private owners is reflected in paragraph 3 of the Statement of Objects and Reasons contained in the Bill which led to the enactment of the 1904 Act. The same reads as under:

> "3. The first portion of the Bill deals with protection of "Ancient monuments" an expression which has been defined in clause 2 (now section 2). The measure will apply only to such of these as are from time to time expressly brought within its contents though being declared to be "protected monuments". A greater number of more famous buildings in India are already in possession or under the control of the Government; but there are others worthy of preservation which are in the hands of private owners. Some of these have already been insured or are fast falling into decay. The preservation of these is the chief object of

the clause of the Bill now referred to and the provisions of the Bill are in general accordance with the policy enunciated in section 23 of the Religious Endowments Act, 1863 (20 of 1863), which recognises and saves the right of the Government "to prevent injury to and preserve buildings remarkable in their antiquity and for their - historical or architectural value or required for the convenience of the public". The power to intervene is at present limited to cases to which section 3 of the Bengal Regulation 19 of 1810 or section 3 of the Madras Regulation VII of 1817 applies. In framing the present Bill the Government Has aimed at having the necessity of good will and securing the cooperation of the owners concerned and it hopes that the action which it is proposed to take may tend rather to the encouragement than to the suppression of private effort. The Bill provides that the owner or the manager of the building which merits greater care than it has been receiving may be invited to enter into an agreement for its protection and that in the event of his refusing to come to terms the collector may proceed to acquire it compulsorily or take proper course to secure its application. It has been made clear that there is to be no resort to compulsory acquisition in the case the monument is used in connection with religious observances or in other case until the owner has had an opportunity of entering into an agreement of the kind indicated above; and it is expressly provided that the monument maintained by the Government under the proposed Act, shall not be used for any purpose inconsistent with its character or with purpose of its foundation, and that, so far as is compatible with the object in view the public shall have access to it free of charge. By the 4th proviso of clause 11 (now section 10) it is laid down that in assessing the value of the monument for the purpose of compulsory acquisition under the Land Acquisition Act, 1894 (1 of 1894) its archaeological, artistic or historical merits shall not be taken into account. The object of the Government as purchaser being to preserve at the public expense and for the public benefit an ancient monument with all its associations, it is considered that the value of those associations should not be paid for."

14. Under the Government of India Act, 1935 the subject "Ancient and historical monuments; archaeological monuments; archaeological sites and remains" was included in Entry 15 of the Federal List. This was done keeping in view the provisions of the 1904 Act which was applicable to all ancient monuments and objects of archaeological, historical or artistic interest.

15. The members of the Constituent Assembly, which was entrusted with the task of drafting the Constitution, were very much aware of the necessity of protecting the monuments and places/objects of artistic or historic importance but they were also conscious of the fact that the Central Government alone may not be in a position to take measures for the protection of ancient and historical monuments across the vast territory of the country. Therefore, it was decided that the States should be burdened with the responsibility of protecting the ancient and historical monuments within their territories. This is the reason why the subject relating to ancient monuments and archaeological sites and remains has been distributed into three different entries:

1. Entry 67 of the Union List - Ancient and historical monuments and records, and archaeological sites and remains, declared by or under law made by Parliament to be of national importance.

2. Entry 12 of the State List - Ancient and historical monuments and records other than those declared by or under law made by Parliament to be of national importance.

3. Entry 40 of the Concurrent List - Archaeological sites and remains other than those declared by or under law made by Parliament to be of national importance.

16. By incorporating Article 49 in the Directive Principles of State Policy, the framers of the Constitution made it obligatory for the State to protect

every monument or place or object of artistic or historic interest, declared by or under law made by Parliament to be of national importance, from spoliation, disfigurement, destruction, removal, disposal or export, as the case may be.

17. Since the 1904 Act governed all ancient monuments whether falling in the Central field or the State field and all executive powers were vested in the Central Government, it was felt that a separate legislation should be enacted by Parliament to exclusively deal with ancient monuments of national importance falling under Entry 67 of List I of the Seventh Schedule and the archaeological sites and remains falling under Entry 40 of List III. For achieving this object, Parliament enacted the Ancient Monuments and Archaeological Sites and Remains Act, 1958 (for short, 'the 1958 Act), the preamble of which reads thus:

> "An act to provide for the preservation of ancient and historical monuments and archaeological sites and remains of national importance, for the regulation of archaeological excavations and for the protection of the sculptures, carvings and other like objects."

18. Sections 2(a), (i), (j), (4) and 38(1), (2)(a) of the 1958 Act read as under:

> "2. Definitions- In this Act, unless the context otherwise requires—
>
> (a) "ancient monument" means any structure, erection or monument, or any tumulus or place

of interment, or any cave, rock, sculpture, inscription or monolith, which is of historical, archaeological or artistic interest and which has been in existence for not less than one hundred years, and includes--

(i) the remains of an ancient monument,

(ii) the site of an ancient monument,

(iii)such portion of land adjoining the site of an ancient monument as may be required for fencing or covering in or otherwise preserving such monument, and

(iv)the means of access to, and convenient inspection of an ancient monument.

(i) "protected area" means any archaeological site and remains which is declared to be national importance by or under this Act.

(j) "protected monument" means any ancient monument which is declared to be of national importance by or under this Act.

4. Power of Central Government to declare ancient monument, etc., to be of national importance—(1) Where the Central Government is of opinion that any ancient monument or archaeological site and remains not included in section 3 is of national importance, it may, by notification in the Official Gazette, give two months' notice of its intention to declare such ancient monument or archaeological site and remains to be of national importance, and a copy of every such notification shall be affixed in a conspicuous place near the monument or site and remains, as the case may be.

(2) Any person interested in any such ancient monument or archaeological site and remains may, within two months after the issue of the notification, objects to the declaration of the monument, or the archaeological site and remains, to be of national importance.

(3) On the expiry of the said period of two months, the Central Government may, after considering the objections, if any, received by it, declare by notification in the Offi-

cial Gazette, the ancient monument or the archaeological site and remains, as the case may be, to be of national importance.

(4) A notification published under sub-section (3) shall, unless and until it is withdrawn, be conclusive evidence of the fact that the ancient monument or archaeological site and remains to which it relates is of national importance for the purposes of this Act.

38. Power to make rules-(1) The Central Government may, by notification, in the Official Gazette and subject to the condition of previous publication, make rule for carrying out the purposes of this Act.

(2)In particular, and without prejudice to the generality of the foregoing power, such rules may provide for all or any of the following matters, namely:--

(a) the prohibition or regulation by licensing or otherwise of mining, quarrying, excavating, blasting or any operation of a like nature near a protected monument or the construction of buildings on land adjoining such monument and the removal of unauthorised buildings."

19. In exercise of the powers conferred by Section 38 of the 1958 Act, the Central Government made the Ancient Monuments and Archaeological Sites and Remains Rules, 1959 (for short, 'the 1959 Rules'). Rules 2(f), 10, 31 to 35 of the 1959 Rules read as under:

"2(f) "prohibited area" or "regulated area" means an area near or adjoining a protected monument which the Central Government has, by notification in the Official Gazette, declared to be a prohibited area, from as the case may be, a regulated area, for purposes of mining operation or construction or both.

10. Permission required for construction etc. (1) No person shall undertake any construction or mining operation with a protected area except under and in

accordance with a permission granted in this behalf by the Central Government.

(2) Every application for permission under sub-rule (1) shall be made to the Central Government in Form I at least three months before the date of commencement of the construction or operation.

31. Notice or intention to declare a prohibited or regulated area—(1) Before declaring an area near or adjoining a protected monument to be a prohibited area or a regulated area for purposes of mining operation or construction or both, the Central Government shall, by notification in the Official Gazette, give one month's notice of its intention to do so, and a copy of such notification shall be affixed in a conspicuous place near the area.

(2) Every such notification shall specify the limits of the area which is to be so declared and shall also call for objection, if any, from interested persons.

32. Declaration of prohibited or regulated area—After the expiry of one month from the date of the notification under rule 31 and after considering the objectio9ns, if any, received within the said period, the Central Government may declare, by notification in the official Gazette, the area specified in the notification under rule 31, or any part of such area, to be a prohibited area, or as the case may be, a regulated area for purposes of mining operation or construction or both.

33. Effect of declaration of prohibited or regulated area —No person other than an archaeological officer shall undertake any mining operation or any construction--

(a) in a prohibited area, or
(b) in a regulated area except under and in accordance with the terms and conditions of a licence granted by the Director-General.

34. Application for licence-Every person intending to undertake any mining operation or any construction in a regulated area shall apply to the Director-General in Form

VI at least three months before the date of commencement of such operation or construction.

35.Grant or refusal of licence—(1) On receipt of an application under rule 34 the Director-General may grant a licence, or, if he is satisfied that the licence asked for should not be granted, may for reasons to be recorded, refuse to grant a licence.

(2)Every licence granted under sub-rule (1) shall be in Form VIII and be subject to the following conditions, namely—

(a) the licence shall not be transferable.
(b) It shall be valid for the period specified therein, and
(c) Any other condition relating to the manner of carrying out the mining operation or the construction which the Director-General may specify in the licence for ensuring the safety and appearance of, and the maintenance of the approach and access to the protected monument."

20. The legislatures of various States including the State of Karnataka enacted separate legislations for protection and preservation of ancient monuments falling under Entry 12 of List II of the Seventh Schedule. The Karnataka Act is titled as "The Karnataka Ancient and Historical Monuments and Archaeological Sites and Remains Act, 1961 (for short, 'the Karnataka Act'). The Statement of Objects and Reasons contained in the Bill which led to enactment of the Karnataka Act reads as under:

"STATEMENT OF OBJECTS AND REASONS
(Karnataka Act No. 7 of 1962)
Karnataka Gazette, Extraordinary, dated 1-11-1959

In the new State of Mysore, the following Acts relating to protection and preservation of ancient monuments, etc., are in force:—

(1) The Hyderabad Ancient Monuments Preservation Act, 1337F (Hyderabad Act VIII of 1337 Fasli) is in force in the Hyderabad Area;

(2) The Mysore Ancient Monuments Preservation Act, 1925 (Mysore Act IX of 1925) is in force in the Mysore Area; and

(3) The Ancient Monuments Preservation Act, 1904 (Central Act VII of 1904) is in force in all the areas of the new State of Mysore.

The Government of India have advised the State Governments not to take advantage of the provisions of the aforesaid Central Act to protect and preserve monuments and to enact their own laws on the subject.

Recently, the Government of India have enacted the Ancient Monuments and Archaeological Sites and Remains Act, 1958 covering matters falling under Entry 67 in the Union List and Entry 40 in Concurrent List of the Seventh Schedule to the Constitution of India.

The present Bill seeks to bring about uniformity in the laws relating to protection and preservation of ancient monuments falling under Entry 12 in the State List, that is, ancient and historical monuments other than those declared by or under law made by Parliament to be of national importance.

The provisions of the Bill are on the lines of the corresponding provisions of the Ancient Monuments and Archaeological Sites and Remains Act, 1958."

21. The preamble of the Karnataka Act and Sections 2(1), (10), 4, 31(1) and (2)(a), which have bearing on the disposal of this appeal read as under:

**Preamble**

"An act to provide for the preservation of ancient and historical monuments and Archaeological sites and remains and for the protection of sculptures, carvings and other like objects in the

State of Karnataka.

Whereas, it is expedient to provide for the preservation of ancient and historical monuments and archeological sites and remains in the State of Karnataka other than those declared by or under law made by Parliament to be of national importance, and for the protection of sculptures, carvings and other like objects;"

**2. Definitions**.—In this Act, unless the context otherwise requires,—

(1) "Ancient monument" means any structure, erection or monument, or any tumulus or place of interment, or any cave, rock-sculpture, inscription or monolith, which is of historical, archeological or artistic interest and which has been in existence for not less than one hundred years, and includes.—

(i) the remains of an ancient monument;

(ii) the site of an ancient monument;

(iii) such portion of land adjoining the site of an ancient monument as may be required for fencing or covering in or otherwise preserving such monument; and

(iv) the means of access to, and convenient inspection of, an ancient monument;

xxxx xxxx xxxx

(10) "Protected monument" means an ancient monument which is declared to be protected by or under this Act.

**4. Power of Government to declare ancient monuments to be protected monuments.—**(1) Where the Government is of opinion that any ancient monument should be declared as a protected monument, it may, by notification in the Official Gazette, give two months' notice of its intention to declare such ancient monument to be a protected monument and a copy of every such notification shall be affixed in a conspicuous place near the monument.

(2) Any person interested in any such ancient monument may within two months after the issue of the notification, object to the declaration of the monument to be a protected monument.

(3) On the expiry of the said period of two months, the

Government may, after considering the objections, if any, received by it, declare by notification in the Official Gazette, the ancient monument to be a protected monument.

(4) A notification published under sub-section (3) shall, unless and until it is withdrawn, be conclusive evidence of the fact that the ancient monument to which it relates is a protected monument for the purposes of this Act.

**31. Power to make rules**.—(1) The Government may, by notification in the Official Gazette and subject to the condition of previous publication, make rules for carrying out the purposes of this Act.

(2) In particular and without prejudice to the generality of the foregoing power, such rules may provide for all or any of the following matters, namely:—

(a) the prohibition or regulation by licensing or otherwise of mining, quarrying, excavating, blasting or any operation of a like nature near a protected monument or the construction of buildings on land adjoining such monument and the removal of unauthorised buildings;

xxxx xxxx xxxx"

22. In exercise of the powers conferred by Section 31 of the Karnataka Act, the State Government framed the Karnataka Ancient and Historical Monuments and Archaeological Sites and Remains Rules, 1966 (for short, 'the Rules'). Rules 2(b), (f) and (g), 11, 12, 13, 14 and 15 of the Rules read as under:

"**2.Definitions. –** In these rules, unless the context otherwise requires. –

(a) xxxx xxxx xxxx

(b) "Construction" of any structure includes additions to or alterations of an existing building;

(f) "Mining operation" means any operation for the purpose of searching for or obtaining minerals and includes quarrying, excavating minerals and includes quarrying, excavating, blasting and any operation of the like nature;

(g) "prohibited area" or "Regulated area" means an area near or adjoining a protected monument which the State Government has, by notification in the Official Gazette, declared to be a prohibited area, or, as the case may be , a regulated area, for purposes of mining operation or construction or both;

xxxx xxxx xxxx

**11. Notice of intention to declare a prohibited or regulated area. -** (1) before declaring an area near or adjoining a protected monument, to be a prohibited area or a regulated area for purposes or mining operation or construction or both, the Government shall, by notification in the Official Gazette, give one month's notice of its intention to do so, and a copy of such notification shall be affixed in a conspicuous place near the area.

(2) Every such notification shall specify the limit of the area which is to be so declared and shall also call for objections, if any, from interested persons.

**12. Declaration of prohibited or regulated area. -** After the expiry of one month from the date of the notification under rule 11 and after considering the objections, if any, received within the said period, the Government may declare, by notification in the Official Gazette, the area specified in the Notification in the under rule 11 or any part, of such area, to be a prohibited area or, as the case may be, a regulated area for purposes of mining operation or construction or both.

**13. Effect of declaration of prohibited or regulated area. -** No person other than the Director shall undertake any mining operation or any construction. –

(a) in a prohibited area, or

(b) in a regulated area, except under and in accordance with the terms and conditions of licence granted by the Director.

**14. Application for licence. -** Every person intending to undertake any mining operation or any construction in a regulated area shall apply to the Director in Form II at least three months before the date of commencement of such operation or construction.

**15. Grant or refusal of licence. -** (1) On receipt of an application under Rule 14, the Director may grant a licence or, if he is satisfied that the licence asked for should not be granted, may for reasons to be recorded, refuse to grant a licence.

(2) Every licence granted under sub-rule (1) shall be in form III and be subject to the following conditions, namely:-

(a) the licence shall not be transferable;

(b) it shall be valid for the period specified therein; and

(c) any other condition relating to the manner of carrying out the mining operation or the construction which the Director may specify in the licence for ensuring the safety and appearance of, and the maintenance of approach and access to , the protected monument."



23. Unfortunately, the greed of the present generation has taken toll not only of various national assets including historical and ancient monuments and like many wild life species, a number of monuments have become extinct because of unregulated mining activities/operations in the vicinity of such monuments and buildings representing heritage and culture of the past.

**The facts**

24. Jambunatheshwara Temple or Jambunatha Temple for whose protection the appellant has been making efforts for last many years was built in 1540 on Jambunath Hill which falls in Hospet Taluk, District Bellary (Karnataka). The temple was built with massive granite blocks in typical trabeate system, characterized by the predominant use of columns and beams as main load bearing members. It is situated 4.5. kilometers southeast of Taluk Hospet, District Bellary (Karnataka) on a hillock at a height of 800 ft. and is surrounded by a range of hillocks rich in good iron-ore. The main temple facing east, consists of a garbhagriha, a sukanasi and an antarala surrounded by a closed ambulatory passage, a navaranga with two entrance mandapas and a maha ranga mandapa all enclosed by a high parakara. The temple rises over a high double adhishthana with ornate mouldings which is typical of Vijayanagara style and period. The wall of the garbhagriha and antarala is decorated with kumuda panjaras set between a pair of pilasters. The ornate eave is decorated with kudu with human heads and kirtimukhas at the top. The sanctum houses a sivalinga over a circular peetha. There are several subsidiary structures surrounding the main temple. There are modern structures built around the temple for the sake of pilgrims and devotees. To the south of the temple are two sub-shrines dedicated to Veerabhadra and Brahma respectively in front of which is a well which gets water through a perennial source from the hillock and serves the needs of the temple and pilgrims. The water from this well is believed to have medicinal and curative properties and hence considered very sacred by the pilgrims. The temple has superstructure built of brick and lime mortar over its sanctum and entrance mandapas. The pillars in the navaranga and maha ranga mandapas are typical of Vijayanagara period with their cubical mouldings depicting carvings of various divinities of Saiva, Sakta and other sects, besides social themes.

25. The temple was declared as a Protected Monument by the Government of Karnataka under Section 4 of the Karnataka Act. By notification dated 13.9.1991, an area of 9 acres 12 cents in Survey No.198 surrounded by Survey No.115-B on all four sides of the temple was declared as 'Protected Area'. By another notification dated 7.12.1996, the State Government declared an area within the radius of 200 meters from the periphery and precincts of Jambunatheswara temple as 'Safe Zone' where no mining activity could be conducted.

26. On 5.4.1952, Shri R. Gangadharappa was granted a mining lease for an area measuring 182.45 hectares near Jambunatheswara temple for extraction of iron ore for a period of 30 years. The lease was renewed on 4.2.1982 for a further period of 30 years in the name of his legal heir Sri R.Pampapathy. During the currency of lease (extended period), Sri R. Pampapathy died and his wife R.Mallamma was permitted to carry on the mining operations in the name of M/s. Aarpee Iron Ore Mines, Bellary (respondent No.4). The lessee was also granted permission under Section 2 of the Forest (Conservation) Act, 1980 (for short, 'the 1980 Act') to undertake mining operations over forest measuring 101.51 hectares.

27. In May, 2003, the Director of Ancient Monuments inspected the temple in the presence of Senior Geologist, Department of Mines and Geology, Karnataka and found that the mining activity was causing damage to the structure of the temple. Thereupon he wrote letter dated 15.7.2003 to the Assistant Commissioner, Endowments to take action for stopping the mining activities within a radius of one kilometer from the temple. Accordingly, the Assistant Commissioner sent letter dated 29.9.2003 to respondent No.4. He also issued notice dated 16.1.2004 to respondent No.4 informing the latter that if the needful is not done, action will be taken under Section 133 Cr.P.C.

28. While the officers of the Karnataka Government entrusted with the task of protecting ancient monuments were taking steps to curb the mining activities within a radius of one kilometer from the temple, the Ministry of Environment and Forests, Government of India accorded permission to respondent No.4 to increase the production of iron ore from 0.6 million tonnes per annum to 1.5 million tonnes per annum.

29. The appellant, who is an Advocate by profession and is practicing at Hospet, Bellary, felt that unless mining activities are stopped in the vicinity of the temple, a centuries old ancient monument may be totally destroyed. Therefore, he filed Writ Petition No.9512/2009 before the Karnataka High Court in public interest and prayed for cancellation of the mining lease granted to respondent No.4 and for issue of a mandamus to the official respondents to stop mining activity within one kilometer from the temple. He further prayed for issue of a direction to Superintending Archaeologist, Archaeological Survey of India (respondent No.9) to take steps for restoration of the temple to its original state. In paragraphs 1, 2, 5 and 6 of the writ petition, the appellant made the following averments:

> "1. The fourth respondent herein was granted permission for mining in Sy. No 115 in Jambhunathahalli, Hospet by the Director of Mines and Geology, the second respondent herein. In January, 2008 the Ministry of Environment and Forest has given permission for expansion of mining activity. The lease area of the mine is about 101.51 hectares. Copy of the mining lease is produced at ANNEXURE-A. The central Government has given environmental clearance for the mining operations on the basis of wrong information furnished by the third respondent. Copy of the permission given by the Ministry of Environment and Forests and for renewal of the mining lease is produced at ANNEXURE- B.
>
> 2. The fourth respondent also obtained permission for adopting a system of deep hole blasting for the mining area from the Directorate General of Mines Safety. Copy of the permission letter is produced at ANNEXURE-C. In January 2008, the fourth respondent also obtained clearance for enhancement of production capacity of iron ore production from the Ministry of Environment and Forests. Copy of the permission is produced at

ANNEXURE-D.

5. The mining operation conducted by the fourth respondent among others consists of blasting, which is done by wagon blasting even though permission is given for "opencast and mechanized blasting". The lessee in question has been using wagon blasting. This type of blasting is not being used and is not in vogue. The wagon blasting results in loud explosion with a deafening sound. The dust spreads to all the nearby places. On account of this, the temple has suffered the most. The column of the outer walls of the temple has turned brown on account of the soil residue settling on the walls. The explosion also causes tremors, which is felt as far as Hospet. The residents of Hospet also feel the intensity of the tremor. Needless to say, the temple, which is almost 100 meters from the mining area is bearing the brunt of these activities. The walls of the temple have cracked and may collapse if mining activities continue.

6. Inside the temple, there is a well. The water in the well is said to contain many medicinal properties. In fact, devotees throng to the temple to collect the water. However, in recent years, the water has turned brown because of the dust. The number of devotees who come to visit the temple has also been reduced to a large extent on account of mining activities and the dust pollutes the nearby areas."



30. Respondent No.4 filed objections and pleaded that the writ petition should not be entertained because Writ Petition No.27067/1998 filed with similar prayer was dismissed by the High Court on 7.8.2000 and that order has become final. It was further pleaded that no blasting operations were being conducted within 200 meters radius of the temple and precautionary measures have been taken to prevent any damage to the temple. An additional plea taken by respondent No.4 was that the writ petition was highly

belated.

31. After taking cognizance of the averments contained in the writ petition, the Division Bench of the High Court directed respondent Nos.2, 3, 8, 10, 12 and 13 (in the writ petition) to submit a report as to whether the area on which respondent No.4 is carrying on mining operation was located within the prohibitory distance of 200 meters specified in the notification issued by the State Government under the Karnataka Act. The concerned respondents inspected the site and submitted a report stating therein that no mining was being done within 200 meters from the temple. The relevant portions of the report are extracted below:

> "Sub:- Brief report regarding mining activities of M/s. R. Mallamma M.L.No.1806 Hospet Taluk, Bellary District.
>
> Ref: Head Office Telephone Message Dt. 28.05.2009.
>
> With reference to above subject as per the directions inspected M.L.No. 1806 area along with J.E of this Office on 28.05.2009.
>
> At time of inspection assistance mines Manager Sri. Phanikumar present on this spot. It is observed that mining lease area of M.LNo. 1806 is just running adjust to the periphery of Sri. Jambunatheshwar Temple. (Sy.No. 198). It is also observed at the time of inspection there was no mining activity in a mining pit which is located at 130 Mtr. from the temple. At present in the said lease mining operation are going on at about 1 Km. away towards East from the temple.
>
> After verifying available records in the office the Government order NO.CI.65.MMM.96 Dt. 07.12.1996 state that mining operations should beyond 200 meters away from the periphery of the temple.(Copy enclosed)

> It further submitted that on 12.10.2007 this Office in the presence of revenue department and police department carried out joint inspection of M/s. R. Mallamma leased area and issued a notice to the said lease stating that they should not carry out any mining activity within 300 Mtrs. from the periphery of the temple.
>
> Further, according to the direction from the Director of Mines and Geology vide letter No. Department of Mines and Geology/ML/1806/Permit/2007-08/6481 dated 22.02.2008 inspection was carried out and report was submitted stating that said lessee is carrying out mining activity 1.7 km. away from the periphery of the temple, (copy enclosed).
>
> Again it is submitted that on 30.08.2008 notice was issued to the said lessee. (Copy enclosed).
>
> This report is submitted for your kind information and further necessary action."

32. The High Court accepted the report and dismissed the writ petition without dealing with any of the issues raised by the appellant.

33. The appellant has questioned the order of the High Court primarily on the ground of non-consideration of the factual assertion made by him about the mining activity of respondent No.4 within 200 meters of the temple by Wagon Blasting Method. He has also pointed out that as per the report submitted before the High Court, respondent No.4 had dug mining pit at 130 meters from the temple resulting in erosion of the soil in and around the temple.

34. Notice of the special leave petition out of which this appeal arises was

issued on 9.7.2010 and respondent Nos.1 to 3 and 6 to 8 were directed to ensure that no mining activity is undertaken or continued at the site in question.

35. In the statement of objections filed on behalf of respondent No.4, the plea of *res judicata* raised before the High Court has been reiterated and it has been averred that no mining activity is being conducted within the Safe Zone declared by the State of Government. According to respondent No.4, the mining lease deed executed in its favour restricts mining operation within a distance of 50 meters from any public structure and in the absence of any other prohibition under the Mines and Minerals (Development and Regulation) Act, 1957 (for short, 'the 1957 Act'), the Mineral Concessions Rules, 1960 or the Mineral Conservation and Development Rules, 1988, the Court cannot prohibit the carrying on of the mining operations within a radius of one kilometer from the temple in question. Respondent No.4 pointed out that several other leaseholders are carrying operation within a distance of one kilometer from the temple. Respondent No.4 also relied upon report dated 9.4.2007 prepared by Deputy Director of Mines and Geology who had inspected the site and pleaded that no damage was done to the temple due to mining operations. Respondent No.4 denied that it was doing mining by the Wagon Blasting Method and emphasized that it had employed controlled blasting method.

36. After hearing the learned counsel for the parties, this Court passed

order dated 8.11.2010 and directed respondent No.9 to personally inspect the site of the temple and the area in which mining activities were going on prior to 9.7.2010 and submit a report indicating whether such activities had affected the temple. In compliance of that order, respondent No.9 made reference to M/s. CIVIL-AID Technoclinic Private Limited, Bangalore to assess the structural stability of the monument due to surrounding mining activities. Thereupon the firm carried out detailed inspection along with concerned officials in November and summarised the outcome of inspection in the following words:

"**PHYSICAL OBSERVATIONS**

Main Temple Structure:

1. Visible settlement of foundation system was observed alround the temple at various locations.

2. Non alignment was observed in plinth level stone beams in most of the locations.

3. Wide gaps were observed between the stone panel joints in most of the locations.

4. Cracks were observed in stone panels at isolated locations.

5. Wide gaps were observed in stone members at beam bearing regions in most of the locations.

6. Non alignment was observed in stone beams between the spans at ceiling level in most of the locations.

7. Cracks were observed in stone capital below the beam bearing region at various locations.

8. The wide gaps between the stone members were observed to be filed with cement mortar.

9. It is observed that recently stone members were observed to be cleaned with chemical wash.

10. WPC over the roof slab was observed to be severely deteriorated in the form of hapazardous cracks.

11. Wide cracks were observed along the stone beam line over the roof slab.

12. Severe undulations were observed over the roof slab in most of the locations.

13. Accumulation of dead leaves and growth of vegetation was observed over the roof slab at various locations.

14. No visible abnormalities was observed in well."

"Peripheral structures:

1. Absence of plinth protection was observed alround the building.

2. Severe growth of vegetation was observed alround the building.

3. Inclined cracks were observed in masonry wall at various locations.

4. Severe separation cracks were observed at the interface of wall and slab junction.

5. Debonding and spalling of plaster was observed in masonry wall at various locations.

6. Damp patches were observed in masonry walls at various locations.

7. Deterioration of WPC was observed over the roof slab."

"Inferences:

Following inferences are drawn, based on the detailed inspection:

1. The visible distress observed in stone members of structure is essentially due to one or the combination of following factors:

- Prolonged age effect.
- Disturbance caused to the structure due to nearby mining activities.
- Inadequate/ineffective maintenance over a period of time.

2. Severe cracks observed in peripheral structures are mainly due to disturbances caused by surrounding mining activities and inadequate maintenance over a period of time."

"Recommendations:

Following recommendations are made, based on the above inferences:

1. In view of the severity of the structural/functional distress and considering structural type of temple structure, it is recommended to carryout mining activities away from temple, atleast 1 km radius around the temple to minimize the possible vibration.

   Further, it is recommended to take up the appropriate restoration of the structure, considering long term durability and safety of the structure after carrying out detailed scientific study of the structure.

2. The deteriorated WPC over the roof slab shall be removed and replaced with appropriate light weight waterproof treatment in order to relieve the loads.

3. The possible endanger to temple structure due to water storage depression in nearby in mining area shall be avoided by creating suitable drainage facility with appropriate benching and pitching to avoid possible collapse of disturbed hillock towards temple structure.

4. Periodic maintenance of the temple structure shall be adhered regularly."

The report prepared by respondent No.9 is accompanied by several

photographs which provide visual evidence of the damage caused to the temple due to mining activities.

37. On 14.1.2011, the Court ordered impleadment of the Superintending Archaeologist of the State of Karnataka as a party and directed him to file an affidavit on the present status of the temple specifying therein whether the mining activities have already damaged the same. Simultaneously, respondent No.9 was directed to indicate whether other lessees were carrying on mining operations in the vicinity of the temple and disclose their names.

38. By an order dated 11.3.2011, the Court ordered impleadment of M/s. Mysore Minerals Ltd., Smt.R. Mallamma, Sri R.J. Pattabhiramaih, Sri Allam Basavaraj, M/s. R.B.S.S.N. Das, Sri R. Charuchandra, Sri H.N. Prem Kumar and M/s Kariganur Mineral Mining Industries as parties and also stayed mining operations within a radius of 2 kilometers from the temple.

39. After service of notice, respondent No.4 filed statement of objections on 31.8.2010, respondent Nos. 1 to 3 and 5 filed their objections on 24.9.2011, respondent No.9 filed affidavit dated 2.10.2010, respondent No.7 filed counter affidavit dated 5.1.2011, respondent No.14 filed affidavit dated 17.2.2011 and respondent No.18 filed counter affidavit dated 15.4.2011.

40. In the statement of objections filed on behalf of respondent No.4, the maintainability of the appeal has been questioned on the ground that similar issue had been raised before the High Court in Writ Petition No. 27027 of

1998 and the same was dismissed vide order dated 7.8.2000. Respondent No.4 has also accused the appellant of seeking the Court's intervention after a long time gap of 27 years. On merits, the case of respondent No.4 is that mining activity is being done strictly in accordance with the provisions of the 1957 Act, the Mineral Concession Rules, 1960 and the Mineral Conservation and Development Rules, 1988 and they do not contain any prohibition on mining operations within a radius of one kilometer from the temple. Respondent No.4 has also relied upon report dated 9.4.2007 prepared by Deputy Director of Mines and Geology and averred that no damage has been caused to the temple due to mining operations. It is also the case of respondent No.4 that mining is being done by controlled blasting and not by Wagon Blasting Method.

41. The thrust of the objections, affidavits and counter affidavits filed by other respondents is that mining is being done as per the provisions of the 1957 Act and the Rules framed thereunder and there is no legal justification for imposing any restriction in violation of that Act and the Rules.

42. One significant aspect of the pleadings which deserves to be mentioned at this stage is that the State of Karnataka and its officers have taken contradictory stands on the issue of the nature of mining operations undertaken by respondent No.4. While respondent Nos. 1 to 3 and 5 have claimed that respondent No.4 has been carrying out mining by controlled blasting in accordance with the permission granted by the Director General of

Mines Safety and not by the Wagon Blasting Method, in affidavit dated 14.2.2011 filed by him, Shri B.M. Chikkamaregowda, Deputy Director, Department of Archaeology and Museums, Kamalapur, Hospet Taluk, Bellary District has unequivocally contradicted this by making the following statement:

> "4. I further humbly submit that, during the inspection, it was observed that the mining activity has been carried out to the east south-east of the temple at a distance of less than 100 meters from the periphery of the temple and extending further to the east and south-east Plate IV (a) & (b). It appears that initially the mining was carried out nearer to the temple continually over a period of decades which has resulted in the formation of a huge crater at about a distance of 100 meters from the temple on the east and later on the mining activity has been extended further east clearly indicated by the stepped terrace formation in a semi-circular pattern surrounding the crater Plate V (a) & (b). Now only a high and narrow ridge divides the temple and the crater. Due to continuous mining, the depth of the crater has reached almost the level of the temple foundation and has become the source of accumulation of rain water as well as rise in sub-soil water level. This has resulted in the underground seepage of water towards the temple which is evidenced by dampness in some of the subsidiary shrines on the southern side.
>
> 5. I further submit that as per the Gazette Notification, an area of 9 aces 12 cents in Survey Number 198 surrounded by on all four sides by Sy.No.115-B, has been declared as protected area and in the absence of clear demarcation of the protected boundary, it could not be ascertained whether the mining activity encroached the protected area also. However, it is certain that the mining activity was carried out in the prohibited area within a distance of 80. As per the provisions of the Karnataka Ancient and Historical Monuments and Archaeological Sites and Remains Act, 1991 (Karnataka Act of 1962), under Section 20, no construction or mining, quarrying, excavating, Wasting or any operation of a like nature is permitted without the permission of the Government. The Director, Department of Archaeology and

Museums, Government of Karnataka who was present during the inspection has informed that no such permission has been given by the Department for carrying out mining operation within the notified zones. As per the records made available by the State, Department of Archaeology, as early as 3rd March 2004, the Deputy Director, Department of Archaeology and Museums, Government of Karnataka, posted at Kamalapura had written to his Directorate office in Mysore that during his spot inspection along with Shri T.M. Manjunathaiah, Technical Assistant, on 27th February 2004 witnessed the mining activity going on in the vicinity of the temple by using explosives (wagon blasting). He also informed that the felt tremors due to the explosion in the temple while he was inspecting the temple. He also noticed cracks on the walls and roof due to the impact of the explosion. He reported that the lessee who was carrying out the mining was doing repairs in the form of plastering and cement coating to cover up the cracks on the ancient temple. He informed the temple priests about the damage being caused due to such unscientific methods of repair which had affected the architectural style of the ancient temple and asked them to stop at once such works. He has recorded in his letter that the temple is getting seriously damaged due to mining activity and the temple is wholly discoloured.

6. I further humbly state that this discoloration is obviously due to the accumulation of the deposit of the mineral dust which was seen by the visiting team on 29th November 2010. However, since the temple administration had done major repairs to the temple proper in the form of chemical cleaning and applying coat of warmish on pillars and walls, the discoloration was seen only in the superstructures over the sanctum and entrance mandapas as well as in patches inside the temple.

7. I further submit that a close inspection of various parts of the temple by Respondent No.9 along with Shri M.V. Visveswara, Deputy Superintending Archaeologist cum Site Manager, World Heritage Site, Hampi revealed that the temple has suffered:

1. Settlement in its foundation in the Navaranga and Maha Ranga Mamlapa portions;
2. A few pillars have gone out of plumb-Plate

VI(a);

3. Concussion fractures in the capital portion of the pillar in Maha Ranga Mandapa Plate VI (b);
4. Extended arms of the capital and beams have broken at some places Plate VII (a) and (b);
5. Widening of joints on the wall portions both horizontal and vertical:
6. Discoloration of the stucco of the superstructure over the entrance mandapas and sanctum Plate VIII and IX;
7. Development of cracks over the roof and the longitudinal as well as peripheral ridge, especially near the joints Plate X (a) and (b);
8. Dampness due to seepage of water capillary action and due to growth of vegetation;
9. Development of cracks over the roof and the longitudinal as well as peripheral ridge, especially near the joints;
10. Dampness due to seepage of water capillary action and due to growth of vegetation.

8. I respectfully submit that again in the month of June 2007 on 16th a joint inspection by Tahsildar, Hospet, Deputy Director, Mines and Geology, Government of Karnataka; Deputy Director, State Archaeology, Government of Karnataka; Revenue Inspector, Hospet; Taluk Surveyor inspected the temple in Survey Number 198 and mining activities in Survey Number 115 as per the instructions of the Deputy Commissioner, Bellary, was carried out and they have confirmed and recorded in their joint inspection report that (i) the cracks were developed in the temple due to mining; (ii) mining activities was carried out in the near proximity of the temple and the (iii) if temple is not conserved and mining activities are not stopped, the temple may get affected severely.

9. I further humbly submit that Shri Subramanian, Senior Geologist, Geological Survey of India, Bangalore, who visited the site along with Respondent No.9, who viewed the site from geological point of view, has opined that because of intense mining activity fine dust particles are deposited on south, south east and north gopuras of the temple and the mining activity has led for the dumping of the mine waste on

the eastern and north eastern part of the temple which has led for artificial drainage on the eastern boundary of the temple. One of the benches of the mine on the north eastern part of the nala (drainage) has led for flooding and soil erosion in and around the temple. As the temple is in lower elevation, the mine is in the upper elevation, road cutting on the upper elevation has lead for debris movement on the southern part of the temple.

10. I further humbly submit that the Principal Design Engineer, Shri Mohan Kumar, BE (Civil); ME (structure), MIE, CH. Eng who was accompanying the team has opined from the point of view of structural engineering, that the visible distress observed in stone members of structure is essentially due to one or the combination of following factors namely Prolonged age effect: Disturbance caused to the structure due to nearby mining activities; Inadequate/Ineffective maintenance over a period of time.

11. I further humbly submit that since the mining has been stopped for quite some time, the actual impact of the blasting/mining on the temple, intensity of the explosion, tremor and vibration as also the precise dust accumulation by using appropriate scientific instruments could not be ascertained. However, even in the absence of above data, the onsite condition clearly brings out the following.

(a) The present condition of the temple which was constructed in around 1500 AD, using massive granite blocks, in trabeate system, is attributed to several factors which are as under;

(b) Aging and lack of periodic maintenance by the concerned department;

(c) Constructional methodology of trabeate system which is having inheritant weakness of yielding to tremors and shocks

(d) As repeatedly pointed out by the Deputy Director of State Archaeology Department, Government of Karnataka and other local authorities and also as observed by the Respondent and other officials, mining activities using explosives in the close proximity of the protected temple has

also contributed to a extent for it& present detracted condition."

43. On 26.4.2011, the Court appointed a Committee of Experts with a direction that it shall inspect the site of the temple, the area where mining activities were being carried out and submit its report. The relevant portions of that order are extracted below:

> "For the purpose of undertaking a comprehensive exercise for evaluation of the damage, if any, caused on Jambunatheswara temple due to mining activities undertaken before passing of stay orders by this Court on 09.07.2010 and 18.02.2011, the Committee comprising the following is constituted:
>
> | | | |
> |---|---|---|
> | 1 | The Director, Directorate of Archaeology & Museums, Government of Karnataka, Karnataka Exhibition Authority Complex, Mysore570 010. | Convenor |
> | 2 | The Superintending Archaeologist, Archaeological Survey of India, Bangalore Circle, 5th Floor, `F' Wing, Kendriya Sadan, Koramangala, Bangalore 560 034. (Along with the team of experts from ASI) | Member |
> | 3 | Geological Survey of India, State Unit of Karnataka & Goa, Vasudha Bhavan, Kumaraswamy Layout, Bangalore 560 078. | Member |
> | 4 | Shri A.B.Morappanavar, IFS, Dept. of Ecology & Environment, Regional Director and Deputy Conservator of Forest, #01, Charanti Matt Building, Shivalaya Road, Sadashivanagar, Belgaum 590001. | Member |
> | 5 | Deputy Director, Department of Mines & | |

| | | |
|---|---|---|
| | Geology, Government of Karnataka, College Road, Hospet 583 201 (Dist.Bellary) | Member |
| 6 | Prof.C.S.Vadudevan, Asst. Professor, Department of Ancient History & Archaeology, Kannada University, Hampi(Vidyaranya) -583 276 (Hospet Taluk, Bellary Dist.) | Member |
| 7 | Sri Pankaj Modi, Conservation Architect, Indian National Trust for Art & Cultural Heritage, Karnataka Chapter, 166, Kattariguppe Water Tank Road, 4th Cross, 4th Block, 3rd Phase, Banashankari III stage, Bangalore 560 085. | Member |
| 8 | The Deputy Director, Directorate of Archaeology & Museums, Government of Karnataka, Kamalapuram 583221. (Hospet Taluk, Bellary Dist.) | Member Secretary |
| 9 | A representative of Directorate General of Mines Safety (DGMS), Dhanbad, Jharkhand | For mine safety |
| 10 | A representative of Indian Bureau of Mines, Nagpur, Maharashtra | For Mining technology |

The Committee shall inspect the site of the temple and the area where mining activities were being carried out, evaluate the impact of the mining activities on the temple from all possible angles keeping in view the relevant statutory provisions including the Environment Protection Act, 1986, the Water (Prevention and Control of Pollution) Act, 1974 and the Air (Prevention and Control of Pollution) Act, 1981."

44. The Court appointed Committee (for short, 'the Committee') held meetings on 6.6.2011 at Hospet, on 8.7.2011 at Mysore and on 27.2.2011, 16.11.2011 and 26.12.2011 at Bangalore. During one of these meetings, the Committee decided to avail of the services of Central Institute of Mining and

Fuel Research (CIMFR), Dhanbad, Jharkhand for DETERMINATION OF SAFE BLASTING PARAMETERS TO AVOID DAMAGE TO THE TEMPLE and National Institute of Technology, Karnataka, Surathkal (hereinafter referred to as 'NIT') for ASSESSMENT OF THE IMPACT OF BLASTING OPERATIONS CARRIED OUT IN IRON-ORE MINES ON JAMBUNATHESWARA TEMPLE AND SAFE LIMITING DISTANCE FOR BLASTING ACTIVITY IN MINES.

45. CIMFR, Dhanbad carried out scientific investigations from 9th to 13th November, 2011. During that period, eight experimental trial blasts were conducted at four different mines viz. Shankalapuram Iron Ore Mine of M/s. R.B. Seth Shreeram Narsingdas (RBSSN) (Respondent No.18), Aarpee Iron Ore Mine of Smt. R. Mallamma (respondent No.4), Jambunatheswara Iron Ore Mine of M/s. Mysore Minerals Limited (respondent No.15) and Kariganaur Iron Ore Mine of M/s. KMMI. Blast-induced ground vibrations and air overpressure/noise generated during the experimental blasts were monitored using five seismographs. Two seismographs were placed near the Jambunatheswara Temple whereas the remaining three seismographs were placed near the blasting sites. In two rounds of trial blasts conducted nearest to the temple (i.e. in Aarpee Iron Ore Mine of Smt. R. Mallamma), a Sony-make Handycam video camera was used to observe any occurrence of fly rock from the blasts.

46. After conducting experimental trial blasts, CIMFR, Dhanbad sent a

detailed report to the Committee along with photographs. The Executive Summary of that report reads as under:

"**EXECUTIVE SUMMARY**

This report relates to the scientific investigations carried out by the Blasting Department, Central Institute of Mining and Fuel Research (CIMFR), Dhanbad for the safety of the Jambunatheswara Temple, situated in Hospet, karnataka from blasting impacts produced by the surrounding mines during operation. The objective of the scientific study was to assess the impact of opencast blasting on the Jambunatheswara Temple and determination of a safe radial distance from the temple up to which all blasting operations should be banned and the area in which controlled blasting operations can be permitted along with details of safe blast design parameters. The field investigation was carried out during 9th - 13th November, 2011. During the field investigation, eight experimental trial blasts were conducted at different mines situated nearby the temple. Ground vibrations and air overpressure/noise generated during the experimental blasts were monitored at various locations using five seismographs. The results of the study, conclusions and recommendations made in the report are summarized below.

1. Eight trial blasts were conducted during the period of the field investigation. Two blasts were conducted at Shankalapuram Iron Ore Mine of M/s R. B. Seth Shreeram Narsingdas (RBSSN), three blasts at Aarpee Iron Ore Mine of Smt. R. Mallamma, two blasts at Jambunatheswara Iron Ore Mine of M/s Mysore Mineral Limited (MML) and another one blast at Karinaganur Iron Ore Mine of M/s KMMI.

2. All the trial blasts were conducted beyond 200 m distance from the Jambunatheswara Temple. The distances of the blasting locations from the temple varied between 290 and 1920.

3. The trial blasts were conducted as per the blast design parameters normally practiced in each mine. The total number of holes in the blasting rounds varied from 6 to 10. Depth of holes varied betwin 7.0 and 10.0 m and blasthole diameter in all the blasts was 115 mm. The total explosive charge varied between 106.20 and 407.50 kg. The maximum explosive charge per delay varied from 17.67 kg to 40.75 kg. Shock tube (Nonel) initiation system was used for both in-hole and surface hole-to-hole initiation in all the blasts.

4. Five seismographs were used for monitoring of blast-induced ground vibrations and air overpressures. In all the eight trial blasts conducted, two seismographs were always fixed at the Jambunatheswara Temple. The rest of the three seismographs were placed nearer to the blasting locations, directed towards the temple site. Distances of the vibration monitoring stations from

the blasting locations varied between 290 and 1920.

5. In total, twenty-two ground vibration data were recorded from the eight experimental trial blasts conducted at the four different mines. The recorded magnitude of ground vibration data varied betwin 0.325 and 6.68 mm/s. The maximum magnitude of ground vibration recorded was 6.68 mm/s at a distance of 200 m from the blasting source.

6. The magnitude of ground vibration data recorded at the Jambunatheswara Temple varied between 0.325 and 1.13 mm/s. The highest magnitude of ground vibration data recorded from all the experimental trial blasts at the temple site was 1.13 mm/s at a distance of 290 m from the blast site. It was recorded near the Eastern Gate of the temple. The trial blast was conducted at the 2nd Bench (Nishant Pit), Aarpee Iron Ore Mine of Smt. R. Mallama (3rd Trial Blast). The total quantity of explosives detonated in the blasting round was 205.02 kg whereas the maximum explosives charge per delay was 34.17 kg.

7. When the trial blasts were conducted beyond 845 m from the Jambunatheswara Temple, no vibration data was recorded by the seismographs which were fixed near the temple. The triggering levels of the instruments were set at sensitive mode viz. 0.30 mm/s.

8. The Fast Fourier Transform (FFT) analysis of vibration data revealed that the dominant frequency of vibration waves varied between 7.5 and 31.8 Hz. In most of the cases, the frequencies were higher than 8 Hz. Only in a very few cases the dominant frequencies were found to be less than 8 Hz.

9. The safe level of peak particle velocity (PPV) for the Jambunatheswara Temple was taken as 2.0 mm/s as per the DGMS Standard (Technical Circular Number 7 of 1997). This value has been taken into account, considering the importance and structural sensitivity of the temple.

10. The recorded magnitudes of ground vibration waves measured inside the Jambunatheswara Temple premises, from all the eight experimental trial blasts conducted during 10th - 13th November, 2011, are well within the safe limits.

11. The levels of air overpressure recorded from the different trial blasts varied between 97.5 and 117.8 dB (L). When the trial blasts were conducted beyond 845 m distance from the temple,

no blasting sound could be heard or noticed physically. The levels of air pressure/noise produced due to blasting were well within the safe limits.

12. No flyrock were observed in any of the eight experimental trial blasts conducted during the field investigation.

13. On the basis of the data recorded as well as observations made during the experimental trials, it may be said, technically and scientifically, that blasting may be carried out beyond 200 m distance from the Jambunatheswara Temple without causing any structural damages, provided that controlled blasting method is strictly adhered to (Tables 3 & 4).

14. Based on the field observations, ground vibration and air overpressure data recorded as well as their subsequent analysis, the following zones are classified for conducting blasting operations surrounding the Jambunatheswara Temple.

200 - 300 m from the Jambunatheswara Temple

300 - 500 m from the Jambunatheswara Temple

Beyond 500 m distance from the Jambunatheswara Temple

15. Within the distance of 200 - 300 m from the temple, controlled blasting with 6m blasthole depth and 115 mm blasthole diameter is recommended. Within300 - 500 m, blasthole depth of 6 - 8 m and 115 mm diameter is recommended. Beyond 500 m distance from the temple, the maximum recommended blasthole depth is 10 m for 115 drill hole diameter.

16. The recommended blast design parameters, controlled measures for ground vibration, flyrock, noise/air overpressure for the safety of the Jambunatheswara Temple are prescribed in Sections 7 & 8. The recommendations should be followed strictly, in letter and spirit.

17. In the present condition, the altitudes (Reduced Level/RL) of the working benches of the different iron ore mines located near the Jambunatheswara Temple are in a higher level than the temple. Most of the mines are also having free faces of the working benches facing towards the temple. However, when the altitudes of these mines become on the same level or lower than the temple in future, it is recommended to reassess the impact of

blast-induced ground vibration on the temple."

47. NIT undertook scientific investigation to assess the impact of blasting operations carried out in surrounding iron ore mines on the stability of Jambunatheswara temple. The objectives of the study undertaken by NIT are enumerated hereunder:

(a) To study the blasting operations carried out in iron ore mines in the surroundings of the Jambunatheswara Temple.

(b) To monitor blast vibrations.

(c) To establish the ground vibrations propagation equation.

(d) To determine the Safe Radial Distance from the Temple up to which blasting activity may be permitted.

(e) To specify the blast design parameters and pattern to be followed, with details like,

- Maximum explosive charge per hole
- Type of initiation and the detonators to be used
- Maximum number of holes per round
- Maximum explosive charge per delay, to ensure PPV to be below 2mm/s for the Historical Temple as per the DGMS Technical Circular-7 of 1997.
- Type of muffling to control fly rock
- Methods of limiting the air blast (noise)
- Any other measures.

48. The investigation conducted by NIT covered Aarpee Iron Ore Mines, Shankalapuram Iron Ore Mine of M/s. RBSSN, Jambunatheswara Iron Ore

Mine of M/s. Mysore Mineral Limited and Kariganur Iron Ore Mine. In all 13 blasts were conducted in these mines in the presence of their representatives and these blasts were monitored at least at two different locations by using blast vibration monitors, MINIMATE DS-077 and MINIMATE PLUS. On the basis of these investigations, NIT suggested that mining activity with drilling and blasting could be permitted up to a distance of 300 meters from Jambunatheswara temple with a cap on usage of maximum explosive charge delay of 44 kg. Dr. V. R. Sastry, Professor of Mining Engineering, NIT submitted a detailed report to the Committee along with a number of photographs. The conclusions and recommendations contained in that report are reproduced below:

> "CONCLUSIONS AND RECOMMENDATIONS
>
> **Conclusions**
>
> Based on the investigations carried out on blasting operations in iron ore mines around Sri Jambunatheswara Temple, the following conclusions are drawn:
>
> Studies were carried out in four iron ore mines, namely Smt. R. Mallamma, ARPEE Iron Ore Mines. Sankalapuram Iron Ore Mine - RBSSN, Jambunatha Halli Iron Mine -Mysore Minerals Ltd., and Kariganur Iron Ore Mine - KMMI.
>
> In total, 13 blasts were carried out in four mines.
>
> Blasts were conducted in different benches and locations, representing different strata conditions.
>
> Diameter of blastholes used in all the blasts was 110mm.
>
> Depth of the blastholes was varying from 6m to 10m.
>
> Number of Blastholes varied from 6 to 14.

Explosive charge per hole varied from 21.75kg to 40.56kg. Total explosive charge per blast varied from 208.2kg to 570.5kg.

Shock tube system of initiation was used for achieving down the hole initiation and also the surface delays.

Hole to Hole initiation was provided in all the blasts.

Sri Jambunatheswara Temple is an ancient Temple and, therefore, a Peak Particle Velocity of 2mm/s was considered as the Threshold value, to maintain stability of the Temple.

Ground vibrations and noise levels from each blast were monitored using five (5) units of Blast Vibration Monitors, MNIMATE-007 and MINIMATE PLUS of Instantel, Canada, at six (6) different locations.

Three monitors were used to record blast vibrations at East entrance. North entrance, and West side of Sri Jambunatheswara Temple.

The recordings indicated ground vibrations of less than 2mm/s Peak Particle Velocity near the Temple.

There was no sign of any fly rock (occurring from any of the 13 blasts) at the Temple.

Ground Vibrations Propagation Equation was established (combined for all mines) for the site as $V = 598.2(D/VW)151$

Based an the investigations carried out it could be concluded that a safe distance of 300m be maintained from Sri Jambunatheswara Temple for carrying out blasting operations.

Maximum explosive charges per delay to be used for conducting the blasts at various distances from the Temple are provided in Table-9.

Individual blasthole to blasthole delay system, as practiced presently, should be continued to maintain safety of the Temple.

**Recommendations**

Proper blast design results in lower ground vibrations.

The depth of blastholes may be maintained as 8-12m. Shorter

benches of less than 8m result in higher ground vibration levels, as stiffness of bench increases.

Each blast should be conducted with a clear free face, to avoid confinement of blasts.

It is recommended to continue the bottom hole initiation as practiced.

Blast layouts should be planned in such a way that the progress of initiation in the blast round is away (opposite) from the Temple structure.

It is recommended to use a maximum of eight (8) blastholes per round, when the blast site is 300m away from the Temple.

It is advisable to continue the system of muffling by covering all the blastholes in the blast round with 25kg sand bags, to minimize the fly rock problem.

It is advisable to implement smaller, meticulously planned and safer blasts, rather than bigger blasts without having much control on the fragmentation process, leading to higher intensity of ground vibrations.

Care should be taken to avoid over confinement blastholes by applying sufficient delay time between blastholes in the blast round. It is advisable to provide a clear delay of 8ms/m between blastholes in the blast layout.

It is recommended to follow the following blast pattern at 300m distance or more from the Temple:

| | |
|---|---|
| Bench height | : 8m |
| Depth of holes | : 8.5-9m |
| Burden | : 2.5 -3.5m |
| Spacing | : 3m - 4.5m |
| Pattern of holes | : Rectangular |
| Initiation | :Straight line pattern/V- pattern |
| No. of rows | : 2 |

No. of holes : 8

Width of blast area : With single row-2.5-3.5m

Length of blast area : 24 - 36m

In-Hole initiation : Shock Tube System

Delay system : Shock Tube system

Charge per hole : 44kg (Maximum)

Max. charge / delay : 44kg

Initiation Pattern: : Straight line pattern

V-pattern

Diagonal pattern (in case free end available)

The layouts of the blasts conducted during the investigations may be continued, with hole to hole individual delays, as shown in Fig. 29."

49. The Committee analysed the aforesaid reports, considered the recommendations made therein and submitted its report to this Court in two volumes. Parts IV and V of the main report, which contain discussions and recommendations read as under:

"IV. DISCUSSIONS:

The Committee unanimously agrees that the mining operations carried out using blasting operations in the near proximity, at a distance of less than 200 m from the Subject temple, have already caused irreparable damages to the temple and the eco-environs of its immediate neighborhood as enumerated in detail in Annexure-I (A), (B), (C) and (D) and expresses its serious concern towards the need of addressing all the issues responsible for such an adverse impact and resorting to make sincere efforts required so that the temple and its immediate environs regain their original aesthetic and architectural grandeur, sanctity and pristine

eco-environs. In the light of the above, the Technical Reports submitted by the various agencies are reviewed and discussed as a prerequisite for making specific recommendations.

1. The Study on Jambunatheswara Temple Surroundings - submitted by Karnataka Remote Sensing Application Centre, ISRO, Bangalore (Annexure-IV) deals with the mining activities carried out in a radius of 1km and 2km. It also illustrates the damage caused to the subject temple and its immediate environs. The agency has used the imageries of 2008. It would have been prudent if it had compared the 2008 imageries with the present/latest one. The agency could have also offered valuable data and comments on two of the very significant issues viz.

1) Compare the vegetation of 2008 *vis-a-vis* 2011, and

2) Specific disturbances to drainage system in the area, caused due to mining.

In spite of these short comings, the study by the KSRSAC has clearly brought out some significant facts. It emphatically establishes that the mining area is located within a horizontal distance of 55 m from the temple premises on the eastern side. There are also mining areas in the south and west of the temple within one Km radius. The effects recorded under "Mining" (page 1-2) of the Report (Annexure-IV) highlights that the mining and related activities have undoubtedly affected the architecturally sensitive temple and its eco-environs. Data provided in the table indicates that more than l/4th (89.66 hectares out of 314.12 hectares) of the area within 1 Km radius and l/5th of the area (275.26 hectares out of 1256.56 hectares) within 2 Km radius have been directly affected due to mining and related activities, thus seriously affecting the land use pattern. It has also brought to light the intentional measures taken by the mining authorities to divert rain water due to the disturbed drainage system to avoid further damage to the subject temple resulting in erosion of the sub-soil during the post monsoon period. Loss of vegetation cover as also dried up tanks due to disturbances caused to the natural drainage system is also highlighted.

Thus, the Report substantiates the statements of Respondent no. 9 (Annexure-I) in so far as

(1) The mining activities have been conducted from a distance of 55 m from the subject temple in dire violation of the provisions of Section 20 of the Karnataka Ancient and Historical Monuments and Archaeological Sites and Remains Act, 1961 and subsequent amendment in 1991 which prohibits mining and construction activities within the Prohibited and Regulated Areas;

(2) The mining activities have adversely affected the temple and

(3) They have also adversely affected the immediate environs of the temple to a great extent.

2. The Conservation Plan for Jambunatha Temple prepared by Indian National Trust for Art and Cultural Heritage, Bangalore Chapter (Annexure-III) substantiates in its entirety the observations made by Respondent No. 9 in the Technical Report (Annexure-I(A), (B) and (C) and the subsequent Affidavit (Annexure-I(D) with regard to the damages caused to the subject temple due to mining and related activities. The deteriorations caused as observed during the comprehensive survey inspection have been enumerated under three broad categories, as stated below:

(1) defects due to movements and vibrations, deflection of beam and plinth stone members, tilts of columns, bulging of walls, cracked stone members, material failure and missing parts;

(2) changes to surfaces, finishes, moisture problem, rising dampness, water seepage, human inflicted problem, lost or missing details, material deterioration, drainage systems, presence of fungi, algae, termites and insects, vegetation growth, changes to surrounding condition and missing portions due to deterioration;

(3) space dimensions and configurations, additions, blocking of openings, false facade, changes to basic plan, topography of the surrounding land, bad re-pointing, bad cleaning techniques, insensitive and out of context additions and finishes (Annexure-III - Chapter III, page 30-100).

In Chapter IV of the said report (Annexure-III - pages 101-109), a further analysis of the deteriorations are enumerated along with the inferences drawn based on which, the Report has suggested detailed conservation plan under short-term measures (immediate measures), long term measures and the requisite budgetary estimate for an amount of Rs.3,43,19,160 (Rupees three crore forty three lakhs, nineteen thousand, one hundred and sixty) only for executing the same in order to bring the temple to its original condition so as to regain its past glory (Chapter V, pp. 110-114).

3. The Reports submitted by Central Institute of Mining and Fuel Research, Dhanbad (Annexure-V) and National Institute of Technology, Karnataka, Surathkal (Annexure-VI), based on Technical field investigations conducted during the 2nd and 3rd weeks of November, 2011, are very helpful in arriving at the safe blasting parameters to avoid damage to Jambunatheswara temple situated near Hospet, Karnataka. However, these reports only partially contribute to understand and assess the damages caused to the subject temple due to the mining activities that have already taken place in the immediate neighborhood of the temple. In this connection, it is submitted that, the site inspection by the Respondent No. 9 and subsequently by the Committee, have established beyond any doubt that damages have been caused to the

Jambunatha Temple due to the impact of the mining using blasting operations in the near proximity. In view of the sensitive nature of the temple, which has already suffered significantly, it was suggested that it was not advisable to conduct any more blasting vibration monitoring tests in the near vicinity of the temple.

It was further suggested that conducting any such blasting vibration monitoring tests in a far of place quite away from the temple, will in no way establish any new scientific proof regarding the impact of mining using blasting operations on the Jambunatha temple.

The mining operations carried out using blasting operations in the near proximity of the subject temple within a distance of less than 200 M have already caused irreparable damages and need to be addressed on priority.

In the above context, the investigating agencies have admittedly conducted all these experimental blasting beyond two hundred meters whereas the study conducted by Karnataka Remote Sensing Application Centre, ISRO, Bangalore (Annexure-IV) has indicated that one of the mines exists within a horizontal distance of 55 meters from the temple premises on the eastern side. Thus, the impact of mining with blasting operations which have already been carried out at a distance between 55 meters and 200 meters (290 meters as in case of the nearest blasting conducted by CIMFR, Dhanbad) cannot be fully understood and assessed scientifically by the present investigations.

These trial blasts have been conducted as per the blast design parameters normally practiced in each mine which are as per the specifications stipulated by the controlling authorities, viz., Indian Bureau of Mines and other agencies and appear to have been conducted under ideal laboratory conditions. Many of the trial blasts have been conducted at locations having free faces of the working benches. Obviously, the results of the investigations show minimum or no impact on the architecturally sensitive temple especially when the blasts are conducted at locations having no 'free surface'. On the basis of the data recorded as well as observations made during the experimental blasts, it is said, "technically and scientifically that blasting may be carried out beyond 200 meters distance from Jambunatheswara temple without causing any structural damages provided that controlled blasting method is strictly adhered to (Annexure-V - Tables 3 and 4) and 'follow the following blast pattern at 300 meters or more from the temple (Annexure-VI - page 88). The data recorded as well as observations made during the experimental blasts, admittedly and essentially are based on individual blasts and the investigating agencies have not either considered or evaluated cumulative or compounded impact of the multiple blastings taking place simultaneously at varying distances and altitudes. It is a matter of common perception that the collective impact of many less/non harmful individual entities could be severe and lethal in effect, probably not requiring any

scientific or technical confirmation.

The CIMFR Report (Annexure-V - page 7) significantly adds that "in the present condition, the altitudes (Reduced Level/RL) of the working benches of the different iron ore mines located near Jambunatheswara temple are in a higher level than the temple. Most of the mines are also having free surfaces of the working benches facing towards the temple. However, when the altitudes of these mines become on the same level or lower than the temple in future, it is recommended to reassess the impact of blast-induced ground vibration on the temple". By this, it may be construed that one cannot assess the impact of blast-induced ground vibrations on the temple when such blasts are made on the same level or lower than the level of the temple which have already been done as observed by the Respondent No. 9 and the members of the Committee during their field visits respectively.

Another significant aspect of the Report of the CIMFR, Dhanbad is that in the very introductory page (Annexure-V - page 1) it has added a Note stating that "It is hoped that the recommendations will be implemented to get the optimum results without hampering the production, productivity and safety. The recommendations are the guidelines, which should be implemented in letter and spirit.

"Since the day-to-day blasting operations are not under the control of CIMFR, the research team will not be held responsible for any untoward incident caused by blasting".

This clearly indicates that nobody will ensure that these recommendations/ guidelines will be implemented in letter and spirit especially in the absence of a vigilant and effective management system to monitor the day-to-day mining operations. The ill- effects of the mining activities that have already taken place in the recent past in and around Jambunatha temple is a clear illustration reflecting this phenomenon.

The Committee opines that the spirit and sanctity of Jambunatheshwara temple, continuously being worshipped from the day of its consecration till today, lies as much in its location as in the form, design and ornamentation of the Structural complex constructed during the Vijayanagara Period in around 1540 A.D. The spirit and sanctity are enhanced due to the locational significance of the Subject temple which is of primary importance. Jambunatheshwara is but one of the thousand and odd names of the manifestations of Lord Shiva, who according to Hindu Mythology and belief, is Kailasanatha - the lord of Kailasa Mountains. For this reason, for a staunch believer of Hinduism, all the hilltops are but a replica of Kailasa Mountains. Any damage caused to the immediate pristine environs of a temple located amidst such picturesque lush green landscape of the hill ranges, affects the very sentiments and beliefs of the pilgrims and devotees thronging to the temple, as it adversely affects the very abode of the lord.

This significance of the location of the temple has yet another facet as it is situated in the Peripheral Zone of the Hampi World Heritage Site, which is included in the World Heritage List of UNESCO. The subject temple forms an integral part of the Vijayanagara architecture, hardly at a distance of about 4.5 kms from Ananatasayana temple, a centrally protected monument. Integration of Natural Heritage with the Built Heritage is one of the criteria for enlisting Hampi in the List of World Heritage Sites. Jambunatha temple, with the backdrop of lush green hill ranges, is one fine example for such harmonious integration. It is mandatory on the part of the State and the Central Governments to maintain the integrity and authenticity of the Site as Signatories to the World Heritage Convention of the UNESCO.

Further, it is significant to note that most of the ambitious 16th Century Vijayanagara temple projects in and around Vijayanagara capital city which are distinguished by vast and lofty enclosures entered through towered gateways, approached by long and broad chariot streets or winding flight of steps following the natural contour of the hills, mandapas with elaborately ornamented pillars etc., are located on the hill tops. Hanuman temple on the Anjanadri Hill, Virabhadra temple on the Matanga Hill, Raghunatha temple on the Malyavanta Hill and the group temples of different periods on the Hemakuta Hill are only a few such examples within the Core Zone of the World Heritage Site. Sri Jambunatheshwara temple on the Jambunatha Hill and Sri Kumaraswamy temple near Sandur are other such temples in the peripheral area of the greater medieval Capital city of Vijayanagara. This place was also entry point to the Vijayanagarpattana, the capital of Vijayanagara empire. Location of such temples for the 'Guardian Deities' on strategically located hilly landmarks of the region endowed with tranquil, picturesque and serene atmosphere of high altitudes, considered as 'abodes of cosmic energy', is part of the very concept of designing 'Cosmic Cities embodying complex yet sacred geometry' derived from the canonical texts of the ancient lore.

Thus the immediate environs of the Subject temple, is pregnant with all the aesthetic, serene, sacred and multifaceted symbolic values.

The 'macro' studies by the high level panel set up by the Union Government and the Indian Council for Forestry Research and Education (ICFRE) and the Environmental Engineering Research Institute (NEERI), which have submitted their reports to the Hon'ble Apex Court in a separate Case pending before the Apex Court, have vividly brought out the adverse impact of mining and related activities in the entire State of Karnataka in general. In its Macro-Environment Impact Assessment report on Bellary, the ICFRE again has highlighted the environmental fall out of mining emphasizing the need to commission a feasibility study to bring in superior underground mining technologies to minimize the adverse impacts.

An overview of the multi-faceted hazardous impact of mining activities in the context of the Bellary District, State of Karnataka is illustrated in the following extract.

'Environmental Engineering Research Institute (NEERI) found that suspended air particles at many locations in the district were far above the national health standards. According to NEERI's report, the dust hanging in the air of Bellary due to rampant mining is a serious health hazard. The area has high incidence of lung infections, heart ailments and cancer. However, the Karnataka State Pollution Control Board (KSPCB) has been tardy in issuing notices to mine-owners under existing laws (including the Air Act, 1981 and the Water Act, 1974). Mining has adversely affected the forest areas, including the 'reserved' forest areas, in Bellary District. Dumping of waste material has caused erosion of the topsoil of the region. Species of wildlife such as the Egyptian vulture, yellow throated bulbul, white backed vulture and four-horned antelopes have vanished due to depletion in the forest cover on account of mining. Rainwater that used to earlier flow down hillocks and replenishes underground aquifers now picks dust along the way, contaminating water and degrading soil, making farming difficult. Studies point towards a fast rate of siltation in the Tungabhadra reservoir due to the deposition of waste material generated from mining'.

The report on the 'Study of Jambunatheshwara temple Surroundings' by the Karnataka Remote Sensing Centre (KSRSAC), commissioned by the present Committee is a micro study addressing a similar issue concentrating mainly

on the land use/land cover highlighting the area occupied by mining and mining related activities within the radius of 1 km and 2 km from the temple.

V. RECOMMENDATIONS:

In the light of the above observations and with due considerations to

(i) the historical, religious, architectural, sculptural and aesthetic values of the Subject temple, forming an integral part of the cultural Heritage of the Vijayanagara period (the masterpieces situated in the nearby Hampi in the same Taluk of Hospet which have been declared as 'World Heritage' in due recognition of their 'Out Standing Universal Values');

(ii) the utmost symbolic and spiritual significance of the immediate pristine environs with lush green landscape of the hill ranges amidst which the said temple is located;

(iii) as also the recommendations regarding the safe blasting parameters to avoid damage to the temple,

(iv) the dire necessity of resorting to the ideology of sustainable mining and

(v) the absence of any vigilant and effective management systems to monitor the adverse impact of the mining activities,

the committee recommends as follows. For the purpose of convenience and easy apprehension of the Recommendations of the Committee, the area surrounding the Subject temple up to 2km has been divided into two Zones namely,

I. CORE ZONE: comprising the temple along with area protected under legal provisions in vogue and the area further beyond it in all directions up to a distance of 1km;

II. BUFFER ZONE: comprising the area further beyond the CORE ZONE in all directions up to a distance of 2 km from the protected area and 1 Km from the Core Zone.

I. CORE ZONE:

1) Total ban of mining with or without blasting but permitting the mining companies to carry away ore already extracted from the area by using earth moving machineries, without causing any damage either to the temple or to the environs;

2) Implementation of immediate conservation measures, initiation of short term conservation measures and arriving at time frame and phasing for long time conservation measures;

3) Preparation and implementation of Mine Closure Plan and

4) Depositing requisite funds.

II. BUFFER ZONE:

1) Mining with blasting operations strictly following the recommendations/guidelines formulated by the investigating agencies (Annexures- V and VI) IN LETTER AND SPIRIT, implementing the Mine Closure Plan and attending to the long term conservation measures to the Subject Temple.

2) Mining in this Zone shall be closely monitored and guided by the experts from Indian Bureau of Mines, Directorate General of Mines Safety, Department of Mines and Geology, Government of Karnataka, Forest Department, Karnataka State Pollution Control Board, Archaeologists, Conservation Architects, and any other scientific agency, if required, for avoiding any possible adverse impact on the Subject temple and its eco-environs in the long run.

Accordingly, the Honorable Apex Court may kindly consider the following:

1. The investigations by CIMFR and NIT (K) have suggested that, no blasting operations shall be carried within 300m radius of the Jumbunatheswara Temple. However, to prevent deposition of air borne dust on the temple causing discoloration, a 500m thick green cover ( fast growing tall trees) has to be developed around 300m zone from the temple. Therefore, no

mining activity shall be allowed in Core Zone (within l km radius) of the temple.

2. The existing haul road to the mines and all the vehicular traffic (other than those of tourists/pilgrims) shall be diverted away from the temple.

3. The mine managements may be directed to submit Mine Closure Plans (MCP) giving detailed and well phased scheme of back filling, plantation and diversion of drains from catchment area, building of necessary infrastructure in and around the temple and other measures required to bring the temple and its immediate environs to regain their original past glory. Before doing so, the Mining Companies may be permitted to carry away the ore already extracted in the Core Zone by using earth moving machineries.

4. A corpus fund may be created by collecting an amount of Rs. 3,43,19,160.00 (Rupees three crore forty three lakhs, nineteen thousand, one hundred and sixty) only from the mining companies operating within 2km radius from the temple. This fund may be utilized for the implementation of all the recommendations contained in the 'CONSERVATION PLAN for JAMBUNATHESHWARA TEMPLE, HOSPET' prepared and submitted by the INTACH, Bangalore Chapter (November 2011) towards the conservation, preservation, beautification etc., as an effort towards the restoration of the original features and the aesthetic values of the temple to the best possible extent besides ensuring that the original environment is restored as far as possible.

5. Pass an order directing M/s Aarpee Iron Ore Mines, No.24/151, Bellary Road, Hospet-583 201, Bellary (Dist) to fill the craters (Nishani Pits/ Mine Pits) caused due to extensive mining in the immediate proximity of the temple up to the ridge level and plant saplings of trees following the local flora like Neem, Tamarind, Pungamia etc., in order to protect the environs of the temple in its original pristine condition within three years by preparing a detailed Mine Closure Plan.

6. Permitting mining with controlled blasting or without blasting using Ripper Dozer/ Rock-breaker or any other machinery and taking adequate measures towards generation, propagation, suppression and deposition of airborne dust in the Buffer Zone. Mining in this zone shall be closely monitored and guided by the experts from Indian Bureau of Mines, Directorate General of Mines Safety, Department of Mines and Geology, Government of Karnataka, Forest Department Karnataka State Pollution Control Board and any other scientific agency to avoid any further damage to the Subject temple and its immediate environs.

7. Pass such other order or orders, as this Hon'ble Court deems fit and proper in the facts and circumstances of the case."

(emphasis supplied)

50. After the Committee submitted its report, several affidavits were filed on behalf of the State of Karnataka. Shri Kaushik Mukherjee, Additional Chief Secretary to Government, Forest, Ecology and Environment Department, Karnataka filed affidavit dated 18.4.2012 stating that in compliance of the Court's order dated 11.3.2011, the State Government had prohibited all mining operations within a radius of 2 kilometers from Jambunatheswara temple. He then referred to order dated 5.8.2011 passed by this Court in SLP(C) Nos. 7366-7367/2010 – Government of A.P. and others v. M/s. Obalapuram Mining Company Limited for a macro level EIA study by the Indian Council of Forestry Research and Education in collaboration with the Wildlife Institute of India, Forest Survey of India and other experts and the steps taken for implementation of that order. In

paragraph 8 of his affidavit, Shri Mukherjee has given the details of eight mining leases falling within the radius of 2 kilometres from Jambunatheswara temple and averred that four of them come in Category-A and the remaining four in Category-B, as pointed out by the Central Empowered Committee constituted by this Court in SLP(C) No.7366/2010 and Writ Petition (C) No.562/2009 – Samaj Parivartana Samudaya v. State of Karnataka. In paragraph 12, Shri Mukherjee has given the details of the actions taken by Karnataka State Pollution Control Board against the defaulting lessees. Shri G.B. Kongawad, Secretary to Government, Commerce and Industries Department filed affidavit on 18.4.2012. He has referred to report dated 18.12.2008 of Lokayukta, Karnataka who found that eight leaseholders were engaged in illegal mining or encroachment. He then averred that the issue of illegal mining in Karnataka is pending before this Court in Writ Petition(C) No.562/2009 and mining activities in Districts Bellary, Chitradurga and Tumkur will be resumed only after compliance of the conditions/directions which may be imposed/given keeping in view the macro level EIA study conducted by ICFRE and the recommendations of the Central Empowered Committee. Shri Anil Kumar Jha, Secretary to Government, Commerce and Industries Department filed affidavit dated 21.7.2012. According to Shri Jha, some portion of the leased area falls within 200 meters of Jambunatheswara temple and renewal of that portion will not be considered now and that respondent No.15 will also be asked to surrender the area which falls within

200 meters of Jambunatheswara temple. Shri Jha has also averred that lease No.1867 granted to one R.J. Pattabhiramaiah had expired on 28.2.2003 and in the absence of renewal application, that lease does not survive for consideration. Shri Jha has claimed that as per the estimates prepared by Indian Bureau of Mines (IBM), about 61.14 million metric tonnes of high grade iron ore was available within the radius of 2 kilometers from the temple and if mining activity is not permitted, potential loss will further diminish the supply of iron ore in the State which is already under severe stress due to the ban on mining. In addition to these officers, Shri R. Sridharan, Principal Secretary to Government, Forest, Ecology and Environment Department and D.R. Veeranna, Additional Director (Minerals), Department of Mines and Geology have also filed their affidavits.

51. Respondent Nos.4, 15 and 18 filed objections to the report of the Committee. In the affidavit filed on behalf of respondent No.4, Smt. R. Mallamma w/o late Shri R. Rampapathy has expressed her willingness to participate in the conservation plan and to contribute to the estimated expenses. According to her, respondent No.4 will start closure operation of Nishani pit/Mine pit, which is adjacent to the temple, within 3 to 5 years as per the plan approved by IBM. She pleaded that the report submitted by the Committee should be discarded because it is contrary to the report submitted by the expert bodies, i.e., CIMFR, Dhanbad and NIT. She claimed that mining carried out beyond a distance of 200 meters from Jambunatheswara

temple is not going to cause any structural damage to the temple. Smt. Mallamma has pleaded that the Core Zone suggested by the Committee is contrary to the provisions of the 1957 Act, Mineral Concession Rules, 1960 and Mineral Conservation and Development Rules, 1988 inasmuch as the scheme of these statutes does not contain any restriction on mining up to a distance of one kilometre from the temple. She has relied upon clause 5 in Part III of the Mining Lease Deed and pleaded that no distance restriction can be imposed over and above what has been prescribed in the statutes and the terms and conditions of lease.

52. In the objections filed on behalf of respondent No.15, the particulars of the lease granted by the State Government have been given and it has been averred that litigation emanating from the lease is pending before the Civil Court at Bangalore and the Karnataka High Court. According to respondent No.15, the restriction suggested by the Committee will adversely affect the production of iron ore and will cause serious loss to the country. Respondent No.15 has also taken the plea that Section 20 of the Karnataka Act restricts mining activities only within the 'Protected Area' and not in other areas.

53. In the objections filed on behalf of respondent No.17, it has been averred that mining activities are being undertaken in accordance with the conditions imposed by the State Government and clearance granted by the Ministry of Environment and Forest, Government of India. According to respondent No.17, its mine is situated at a minimum distance of about 500

meters from Jambunatheswara temple and no damage can be caused to the temple due to mining operations. It is also the case of respondent No.17 that the recommendations made by the Committee for creating Core Zone and Buffer Zone should not be accepted because the two expert bodies engaged by it did not make any such suggestion and even otherwise this would be contrary to the provisions of the 1957 Act and the Rules framed thereunder.

54. Shri Ajay Saraf has filed affidavit on behalf of respondent No.18. He has given details of the mining leases awarded by the State Government to M/s. RBSSN Das and the permission accorded for operating the Beneficiation Plant. In paragraphs 15 to 18, Shri Saraf has averred as under:

> "15. I say that operation of the Applicant's Beneficiation Plant does not in any manner cause any damage whatsoever to the Shri Jambunatheshwara Temple or the environment. On the contrary, the Beneficiation Plant is advantageous to the country and the environment and ecology and is processing low grade Iron Ore of mines in the State of Karnataka and converting low grade Iron Ore, which would otherwise be wasted, into usable and valuable higher grade Iron Ore. I say that beneficiation is not mining nor a mining operation/process. After completion of mining operations the waste/unusable mined iron ore is made usable by beneficiation which is a separate benign process for recovery of Iron Fe from waste/unusable iron ore. Beneficiation may be done in situ in the mine or anywhere else. Beneficiation is the first step for manufacture of steel and iron ore pellatisation plants have Beneficiation plants or outsource the beneficiation.
>
> 16. I say that the Beneficiation Plant was expanded in the year 2010 at an additional cost of Rs.30 crores from 0.9. MTPA to 5.0 MTPA after due environment clearance from the Ministry of Forests and Environment & Forests (MOEF), Government of India and the Karnataka State Pollution Control Board (KSPCB). Hereto annexed and marked as Annexure R-5 and Annexure R-6 respectively, are true copies of the Orders dated 24.12.2009 passed by the MOEF and the Order dated 12.05.2010 by the KSPCB.
>
> 17. I say that the reliance by Respondent No.14 on the State

Government's letter No. CI 135 EMM 76, dated 18.08.1978, to suggest that iron ore mining operations are prohibited within a radius of 2 kms near and around National Monuments of Archaeological importance is wholly erroneous. I say that it can never be assumed or countenanced that for 33 years, the State Government has repeatedly and continuously been illegally granting iron ore mining leases from the year 1978 till date in areas falling in a radius between 300 metres and 2 kms near and around National Monuments of Archaeological importance and/or that MOEF, Indian Bureau of Mines (IBM), Director of Mines and Geology, Director General of Mine Safety, Central Pollution Control Board, State Pollution Control Boards, Archaeological Survey of India have permitted mining leases and mining operations between 300 metres and 2 kms of the Shri Jambunatheshwara Temple and/or any other Temple in the State of Karnataka and/or India in contravention of such prohibition. These permissions have been in accordance with the consistent policy of MOEF, Indian Bureau of Mines (IBM), Director of Mines and Geology, Director General of Mine Safety, Central Pollution Control Board and Archaeological Survey of India, on iron ore and other mining in all states. Hereto annexed and marked as Annexure R-7 is a true copy of the State Government's letter No. CI 135 EMM 76, dated 18.07.1978.

18. Similarly, it cannot be assumed or countenanced that the State Government has itself violated its own letter No. CI 135 EMM 76, dated 18.08.1978. I say that the reliance by Respondent No. 14 viz the Director, Department of Archeology, on the State Government's decision in CI 135 EMM 76, dated 18.08.1978, by the then Under Secretary to all Deputy Commissioners of the Districts and Superintending Archaeologists, Archaeological Survey of India regarding the State Government decision not to grant mining lease and PL lease for removal of building stones near and around National Monuments of Archaeological importance within a radius of 2 kms is only in respect of mining of stones and not Iron Ore. For iron ore mining leases the prohibited zone is a radius of 100 metres and the restricted/regulated zone is a radius of 200 metres vide the Notification dated 16.06.1992 issued by the competent authority viz. the Department of Culture, Government of India and Archaeological Survey of India. Copy of the

Notification, dated 16.06.1993 is hereto annexed as Annexure R-8."

**Arguments**

55. Shri G.V. Chandrashekar, learned counsel for the appellant argued that the recommendations made by the Committee should be accepted without any modification because the same are based on a comprehensive consideration of the reports of CIMFR, Dhanbad and NIT. Shri Chandrashekar referred to the discussion part of the report prepared by the Committee to show that experiments conducted by CIMFR, Dhanbad did not provide sound basis for determining the impact of blasting on the protected monument. He pointed out that CIMFR had prepared the report by conducting isolated blasts at different sites on different dates and argued that the impact of such blasts is insignificant and cannot help in deciding whether or not the temple has suffered damages on account of multiple blasts simultaneously conducted by different leaseholders. Shri Chandrashekhar also pointed out that the report prepared by NIT is inconclusive because the agency did not have the benefit of judging the impact of multiple blasting on Jambunatheshwara temple. Learned counsel pointed out that the report submitted by respondent No.9 clearly shows that extensive damage has been caused to the temple and its surroundings due to unabated blasting carried out by the leaseholders. Shri Chandrashekar submitted that the recommendations made by the Committee should be accepted because the same were made by the Commit-

tee after threadbare examination of the reports of CIMFR and NIT. In the end, the learned counsel argued that the restrictions prescribed under the 1958 Act and the Karnataka Act are not conclusive and the Court should accept the recommendations made by the Committee, as was done in M.C. Mehta v. Union of India (1996) 8 SCC 462 and other cases.

56. Ms. Anitha Shenoy, learned counsel appearing for the State of Karnataka relied upon notification dated 10/12.3.1998 issued under Section 4 of the Karnataka Act read with Rule 11(1) and (2) of the Karnataka Historical and Archaeological Monuments and Archaeological Sites and Remains Rules, 1968 and argued that the Court should not accept the recommendations of the Committee because restriction on mining within 2 kilometres from Jambunatheswara temple will not only be *ultra vires* the statutory provisions contained in the 1957 Act and the Rules framed thereunder, but will also be highly detrimental to public interest. She extensively referred to the reports of CIMFR, Dhanbad and NIT and argued that the recommendations made by the two expert bodies should be accepted because the same are in consonance with the provisions of the 1957 Act and the terms and conditions on which leases were granted to the private respondents.

57. Shri A.D.N. Rao learned counsel appearing for the Ministry of Environment and Forests, Government of India and respondent No.9 argued that the Committee had rightly refused to base its recommendations on the reports of CIMFR, Dhanbad and NIT because the survey and trial blasts were conducted by the two bodies under ideal conditions and not conditions similar to those in which the lessees had simultaneously operated mines till

the passing of interim orders by this Court. Shri Rao also referred to the affidavits dated 2.10.2010 and 17.2.2011 filed by respondent Nos. 9 and 14 respectively and argued that respondent No.4 was carrying on mining activities in the vicinity of temple by using Wagon Blasting Method which resulted in substantial damage to the temple.

58. Shri U.U. Lalit, learned senior counsel appearing for respondent No.18 relied upon the judgment in Samaj Parivartana Samudaya v. State of Karnataka 2013(6) SCALE 90 and argued that in view of the express permission granted by the three-Judge Bench for operation of mines in District Bellary subject to certain conditions, the appellant cannot seek any other restriction on mining activities beyond a distance of 200 meters from Jambunatheswara temple. He pointed out that the two leases granted to respondent No.18 are at a distance of 790 meters and 1.09 kilometres respectively from the temple and the Beneficiation Plants are at a distance of 1.14 kilometres. He then submitted that respondent No.18 does not have blasting permission and only Ripper Dozer is employed for excavation of the mineral, which is then taken to the Beneficiation Plant through the conveyer belt. Shri Lalit emphasized that the reports submitted by respondent No.9 and the two expert bodies engaged by the Committee have not found respondent No.18 responsible for causing any damage to the structure of the temple and argued that it should be allowed to continue mining by Ripper Dozer and Rock Breaker. He placed before the Court the papers showing photographs of Ripper Dozer

and Rock Breaker machines and submitted that mining by these machines will not cause any damage to the temple or surrounding environment. Shri Lalit also filed xerox copy of report prepared by Central Institute of Mining and Fuel Research, Regional Centre, Nagpur which was prepared at the instance of respondent No.18. He further submitted that building of the temple may have been damaged due to passage of time, lack of maintenance by the concerned government departments and agencies or due to use of explosives in its close proximity by respondent No.4 and others. He invited the Court's attention to paragraph 4 of the affidavit filed on behalf of the State Government to show that the Government of Karnataka has taken an in-principle decision not to renew any lease falling within 200 meters of the temple. Shri Lalit then highlighted the mechanism employed in the Beneficiation Plant and submitted that the operation of the plant will not affect the temple. Shri Lalit placed before the Court papers showing the photographs of Ripper Dozer and Rock Breaker.



59. Shri Altaf Ahmed, learned senior counsel appearing for respondent No.2 argued that his client does not have any objection to the acceptance of the recommendations made by the Committee, provided that the same is made applicable to all the lessees.

60. Shri Jaideep Gupta, learned senior counsel appearing for respondent No.15 advocated for acceptance of the report of the Committee subject to appropriate modification in the light of the recommendations made

by the expert bodies. Shri Gupta invoked the principle of sustainable development and argued that the Court should strike a balance between the requirement of protecting the temple and the need of iron ore for the State and the country. Shri Gupta emphasised that any unreasonable restriction on mining activities in and around the temple premises will adversely impact the production of steel in the country. In support of his argument/submission, Shri Gupta relied upon the judgment in N.D. Jayal v. Union of India (2004) 9 SCC 362.

61. Ms. Kiran Suri, learned counsel appearing for respondent No.4 and respondent No.17, Allam Basavaraj relied upon report dated 27.5.2009 filed before the High Court to show that at the time of inspection, no mining activities were conducted in the mining pit located within 150 meters of the temple and in terms of G.O. No. 712/1996 issued by the Government of Karnataka, no mining was permitted within 100 meters of the temple. Learned counsel emphasized that at the time of inspection carried out pursuant to the direction given by the Director of Mines and Geology, it was found that respondent No.4 was carrying on mining at a distance of 1.4 kilometres from the temple. Ms. Suri relied upon the lease deeds executed in favour of respondent No.4, permission granted under Regulation 164(1)(b) of Metalliferous Mines Regulations, 1961, letter dated 11.4.2007 issued by the Department of Mines and Geology permitting respondent No.4 to continue the mining activities and argued that no further restriction should be imposed

on its mining activities by relying upon the recommendations of the Committee. Ms. Suri laid considerable emphasis on the fact that respondent No.4 has not undertaken mining operations by using heavy explosives. Learned counsel also pointed out that on being directed by the Department of Mines and Geology, respondent No.4 had constructed a protection wall around the temple and submitted that now there is no possibility of any damage to the temple on account of the blasting undertaken by respondent No.4. Ms. Suri argued that the recommendations made by the Committee are liable to be rejected because the same are contrary to the provisions of 1957 Act and the Rules made thereunder. As regards respondent No.17, Ms. Suri argued that mining activities were being undertaken as per the plan approved by IBM and there is no possibility of such activity causing any damage to the temple.

**Consideration**

62. We have given serious thought to the arguments/submissions of the learned counsel for the parties and carefully perused the records including the affidavits/objections filed in response to the recommendations made by the Committee. We have also gone through the written arguments filed by the appellant and some of the respondents.

63. Before dealing with the arguments/submissions of the learned counsel, we consider it proper to mention that even though in their counter affidavits some of the official respondents and respondent No.4 have

raised an objection to the maintainability of the appeal on the ground that relief similar to the one prayed for by the appellant had been sought in Writ Petition No.27067/1998 filed before the High Court by way of public interest litigation, which was dismissed on 7.8.2000, the same was not pressed during the course of arguments. That apart, we do not find valid ground to entertain the objection of *res judicata* because the official and private respondents have not filed the pleadings of Writ Petition No.27067/1998 and without going through the same, it is not possible for this Court to record a finding that the appellant should be non-suited because a similar petition had been dismissed by the High Court.

64. The 1957 Act was enacted by Parliament to provide for development and regulation of mines and minerals under the control of Union. The backdrop in which the 1957 Act was enacted is discernible from the Statement of Objects and Reasons contained in the Mines and Minerals (Regulation and Development) Bill, which reads as under:

> "Under the Government of India Act, 1935, the subject "Ancient and historical monuments; archaeological monuments; archaeological sites and remains" fell within Entry 15 of the Federal List. Under the Constitution, this subject has been distributed under three different heads, namely,--
>
> Entry 67, Union List – Ancient and historical monuments and records, and archaeological sites and remains, declared by or under law made by Parliament to be of national importance.
>
> Entry 12, State List – Ancient and historical monuments and records other than those declared by or under law made by Parliament to be of national importance, and

> Entry 40, Concurrent List – Archaeological sites and remains other than those declared by or under law made by Parliament to be of national importance."

65. Sections 4(1), 5(1) and 6(1) which postulate grant of prospecting licences and leases and contain certain restrictions read as under:

> "Section 4(1) of the Act prohibits any kind of mining or related activity in any area without a license for that regard under the Act and its rules. Section 4A also allows the Central government to terminate prospecting or mining leases in various circumstances.
>
> Section 5(1) provides that a state government can grant reconnaissance permit, prospecting licence or mining lease only to an Indian National or a company and only on satisfaction of rules made under the Act. Section 5(2) prohibits the state government from granting a mining license unless it is satisfied that there is evidence to show that the area for which the lease is applied for has been prospected earlier and there is a mining plan duly approved.
>
> Section 6(1) limits the maximum area for which one or more mining licences can be granted to one person to 10 sq. km, for prospecting license to 25 sq. km. and for reconnaissance permit to 10,000 sq. km. Section 7(1) provides that a reconnaissance permit or prospecting licence cannot be granted for more than 3 years and if renewed cannot exceed 5 years in total. Section 8(1) and 8(2) provide that a mining lease can be granted for a maximum of 30 years and can be renewed for a period not exceeding 20 years."

66. The Mineral Concession Rules, 1960 were framed by the Central Government under Section 13 of the 1957 Act. The provisions contained in Chapters II and III of these Rules regulate grant of reconnaissance permits and prospecting licences in respect of land in which the minerals vest in the government. Chapter IV contains provisions relating to grant of

mining leases in respect of land in which the minerals vest in the government. Chapter V contains the procedure for obtaining a prospecting licence or mining lease in respect of land in which the minerals vest in a person other than the government. Chapter VIII contains miscellaneous provisions.

67. The Mineral Conservation and Development Rules, 1988 which were framed by the Central Government under Section 18 of the 1957 Act are divided into ten chapters. Chapter III of these Rules, which relate to mining operations, provide for submission of mining plan and approval thereof by the competent authority as a condition precedent for commencement of mining operations.

68. None of the provisions contained in the 1957 Act and the Rules framed thereunder regulate mining operations/activities in the vicinity of ancient and historical monuments and archaeological sites. This subject is exclusively governed by the 1958 Act and similar enactments made by the State Legislatures including the Karnataka Act. Like the 1958 Act, the Karnataka Act also provides for declaration by the government of any ancient monument as a "Protected Monument". Both the Central Government and the State Government have framed rules for grant of permission/licence in the prescribed form to undertake any mining operations in a protected and/or regulated area. Rule 10 of the 1959 Rules, which has been framed under Section 38 of the 1958 Act and Rules 11 to 15 of the Karnataka Rules provide that no person shall undertake any mining operations in a regulated area other than on

the strength of a licence granted by the competent authority, i.e., the Director. The material placed on record of this appeal does not show that the private respondents have obtained such licence under the Karnataka Rules for permission to undertake mining operations within the prohibited and/or regulated area. Therefore, they cannot be allowed to operate mines in the protected and/or regulated area.

69. The argument of learned counsel for the private respondents that the report of the Committee should not be accepted because the same is contrary to the recommendations made by the two expert bodies sounds attractive but, on a wholesome consideration, we do not find any merit in it because the Committee had thoroughly scrutinised the reports sent by the two expert bodies, i.e., CIMFR, Dhanbad and NIT and then decided that the area surrounding the temple should be divided into two zones, i.e., Core Zone and Buffer Zone and there shall be total ban on mining within the Core Zone while mining be permitted in the Buffer Zone under the supervision of an expert body/agency.

70. At this stage, we may mention that in June 1972, the United Nations organised a conference on 'Human Environment' at Stockholm, Sweden. The declaration issued at the end of that conference, which is called as the Stockholm Declaration, has been aptly described by this Court in Essar Oil Ltd. v. Halar Utkarsh Samiti (2004) 2 SCC 392 as 'magna carta

of our environment'. Some of the principles enunciated in the Stockholm Declaration are:

> "Principle 2
>
> The natural resources of the earth, including the air, water, land, flora and fauna and especially representative samples of natural ecosystems, must be safeguarded for the benefit of present and future generations through careful planning or management, as appropriate.
>
> Principle 4
>
> Man has a special responsibility to safeguard and wisely manage the heritage of wildlife and its habitat, which are now gravely imperilled by a combination of adverse factors. Nature conservation, including wildlife, must therefore receive importance in planning for economic development.
>
> Principle 8
>
> Economic and social development is essential for ensuring a favorable living and working environment for man and for creating conditions on earth that are necessary for the improvement of the quality of life.
>
> Principle 11
>
> The environmental policies of all States should enhance and not adversely affect the present or future development potential of developing countries, nor should they hamper the attainment of better living conditions for all, and appropriate steps should be taken by States and international organizations with a view to reaching agreement on meeting the possible national and international economic consequences resulting from the application of environmental measures."

Though the Stockholm Conference recognised the links between environment and development but little was done to integrate this concept for international action until 1987 when the Brundtland Report, *Our Common Future* was

presented to the United Nations General Assembly. The Brundtland Report stimulated debate on development policies and practices in developing and industrialised countries alike and called for an integration of our understanding of the environment and development into practical measures of action. In 1992, Earth Summit was held in Rio de Janeiro, Brazil. The declaration issued at the end of the summit dealt with environmental needs, environmental protection, environmental degradation, etc. The World Summit on Sustainable Development was held in Johannesburg, South Africa in 2002 for the purpose of evaluating the results achieved after the Rio Summit. This summit gave an opportunity to build on the knowledge gained over the past decade and provided a new impetus for commitments of resources and specific action towards global sustainability.

71. In Indian Council for Enviro-Legal Action v. Union of India (1996) 5 SCC 281, this Court described the principle of sustainable development in the following words:

> "While economic development should not be allowed to take place at the cost of ecology or by causing widespread environment destruction and violation; at the same time the necessity to preserve ecology and environment should not hamper economic and other developments. Both development and environment must go hand in hand, in other words, there should not be development at the cost of environment and vice versa, but there should be development while taking due care and ensuring the protection of environment."

72. In Vellore Citizens' Welfare Forum v. Union of India (1996) 5 SCC 647, this Court acknowledged that the traditional notion of conflict between ecology and development is no longer acceptable and sustainable development is the answer.

73. In Essar Oil Ltd. v. Halar Utkarsh Samiti (supra) this Court referred to the Stockholm Declaration and observed:

> "This, therefore, is the aim, namely, to balance economic and social needs on the one hand with environmental considerations on the other. But in a sense all development is an environmental threat. Indeed, the very existence of humanity and the rapid increase in the population together with consequential demands to sustain the population has resulted in the concreting of open lands, cutting down of forests, the filling up of lakes and pollution of water resources and the very air which we breathe. However, there need not necessarily be a deadlock between development on the one hand and the environment on the other. The objective of all laws on environment should be to create harmony between the two since neither one can be sacrificed at the altar of the other."

74. We may now notice some of the judgments which have bearing on the scope of the Court's power to issue directions but which may appear to be contrary to the statutes operating in the particular field. In Bandhua Mukti Morcha v. Union of India (1984) 3 SCC 161, this Court considered whether a letter addressed to a Judge of this Court could be treated as a writ petition under Article 32 of the Constitution and whether directions could be issued for release of an indeterminate number of citizens who were

held as bonded labourers. While dealing with the scope of Article 32 of the Constitution, this Court observed:

> "..... It will be seen that the power conferred by clause (2) of Article 32 is in the widest terms. It is not confined to issuing the high prerogative writs of habeas corpus, mandamus, prohibition, certiorari and quo warranto, which are hedged in by strict conditions differing from one writ to another and which to quote the words spoken by Lord Atkin in United Australia Limited v. Barclays Bank Ltd. 1941 AC 1:(1939) 2 KB 53 in another context often "stand in the path of justice clanking their mediaeval chains". But it is much wider and includes within its matrix, power to issue any directions, orders or writs which may be appropriate for enforcement of the fundamental right in question and this is made amply clear by the inclusive clause which refers to in the nature of habeas corpus, mandamus, prohibition, quo warranto and certiorari. It is not only the high prerogative writs of mandamus, habeas corpus, prohibition, quo warranto and certiorari which can be issued by the Supreme Court but also writs in the nature of these high prerogative writs and therefore even if the conditions for issue of any of these high prerogative writs are not fulfilled, the Supreme Court would not be constrained to fold its hands in despair and plead its inability to help the citizen who has come before it for judicial redress, but would have power to issue any direction, order or writ including a writ in the nature of any high prerogative writ. This provision conferring on the Supreme Court power to enforce the fundamental rights in the widest possible terms shows the anxiety of the Constitution-makers not to allow any procedural technicalities to stand in the way of enforcement of fundamental rights. The Constitution-makers clearly intended that the Supreme Court should have the amplest power to issue whatever direction, order or writ may be appropriate in a given case for enforcement of a fundamental right. But what procedure shall be followed by the Supreme Court in exercising the power to issue such direction, order or writ? That is a matter on which the Constitution is silent and advisedly so, because the Constitution-makers never intended to fetter the discretion of the Supreme Court to evolve a procedure appropriate in the circumstances of a given case for the purpose of enabling it to exercise its power of enforcing a fundamental right. Neither clause (2) of Article 32 nor any other provision of the Constitution requires that any

particular procedure shall be followed by the Supreme Court in exercising its power to issue an appropriate direction, order or writ. The purpose for which the power to issue an appropriate direction, order or writ is conferred on the Supreme Court is to secure enforcement of a fundamental right and obviously therefore, whatever procedure is necessary for fulfilment of that purpose must be permissible to the Supreme Court.

…….It is for this reason that the Supreme Court has evolved the practice of appointing commissions for the purpose of gathering facts and data in regard to a complaint of breach of a fundamental right made on behalf of the weaker sections of the society. The report of the Commissioner would furnish prima facie evidence of the facts and data gathered by the Commissioner and that is why the Supreme Court is careful to appoint a responsible person as Commissioner to make an enquiry or investigation into the facts relating to the complaint. It is interesting to note that in the past the Supreme Court has appointed sometimes a District Magistrate, sometimes a District Judge, sometimes a professor of law, sometimes a journalist, sometimes an officer of the Court and sometimes an advocate practising in the Court, for the purpose of carrying out an enquiry or investigation and making report to the Court because the Commissioner appointed by the Court must be a responsible person who enjoys the confidence of the Court and who is expected to carry out his assignment objectively and impartially without any predilection or prejudice. Once the report of the Commissioner is received, copies of it would be supplied to the parties so that either party, if it wants to dispute any of the facts or data stated in the report, may do so by filing an affidavit and the court then consider the report of the Commissioner and the affidavits which may have been filed and proceed to adjudicate upon the issue arising in the writ petition. It would be entirely for the Court to consider what weight to attach to the facts and data stated in the report of the Commissioner and to what extent to act upon such facts and data."

(emphasis supplied)

75. In Rural Litigation and Entitlement Kendra v. State of U.P (1985) 2 SCC 431, this Court was called upon to consider whether there should be ban on lime stone quarries which had threatened life of the people

residing in Mussoorie Hill range forming part of the Himalayas and surrounding environment. On 11.8.1983, the Court appointed a committee consisting of Shri D.N. Bhargav, Controller General, Indian Bureau of Mines, Nagpur, Shri M.S. Kahlon, Director General of Mines Safety and Col. P. Mishra, Head of the Indian Photo Interpretation Institute (National Remote Sensing Agency) for the purpose of inspecting the lime stone quarries referred to in the writ petition and the list submitted by the Government of Uttar Pradesh. The committee inspected most of the lime stone quarries and submitted three reports and divided the lime stone quarries into three categories, i.e., A, B and C. The committee noted that mining operations in the quarries categorised as A did not gravely impact the environment and life of the people whereas the quarries comprised in the other two categories had adversely impacted the environment. After taking into consideration the report of the Bhargav Committee, the Court directed closure of all lime stone quarries in category C. As regards category B quarries, the Court appointed another committee headed by Shri D.Bandyopadhyay, Secretary, Ministry for Rural Development and issued several directions. While dealing with the question of hardship to the quarry owners, the Court observed:

> "The consequence of this Order made by us would be that the lessees of lime stone quarries which have been directed to be closed down permanently under this Order or which may be directed to be closed down permanently after consideration of the Report of the Bandyopadhyay Committee, would be thrown out of business in which they have invested large sums of money and expended considerable time and effort. This would

undoubtedly cause hardship to them, but it is a price that has to be paid for protecting and safeguarding the right of the people to live in healthy environment with minimal disturbance of ecological balance and without avoidable hazard to them and to their cattle, homes and agricultural land and undue affectation of air, water and environment."

(emphasis supplied)

76. In State of Bihar v. Murad Ali Khan (1988) 4 SCC 655, this Court observed:

"The state to which the ecological imbalances and the consequent environmental damage have reached is so alarming that unless immediate, determined and effective steps were taken, the damage might become irreversible. The preservation of the fauna and flora, some species of which are getting extinct at an alarming rate, has been a great and urgent necessity for the survival of humanity and these laws reflect a last ditch battle for the restoration, in part at least, a grave situation emerging from a long history of callous insensitiveness to the enormity of the risks to mankind that go with the deterioration of environment. The tragedy of the predicament of the civilised man is that 'Every source from which man has increased his power on earth has been used to diminish the prospects of his successors. All his progress is being made at the expense of damage to the environment which he cannot repair and cannot foresee'. In his foreword to International Wild Life Law, H.R.H. Prince Philip, the Duke of Edinburgh said:

> 'Many people seem to think that the conservation of nature is simply a matter of being kind to animals and enjoying walks in the countryside. Sadly, perhaps, it is a great deal more complicated than that ….
>
> … As usual with all legal systems, the crucial requirement is for the terms of the conventions to be widely accepted and rapidly implemented. Regretfully progress in this direction is proving disastrously slow ….'

> 'Environmentalists' conception of the ecological balance in nature is based on the fundamental concept that nature is 'a series of complex biotic communities of which a man is an inter-dependent part' and that it should not be given to a part to trespass and diminish the whole. The largest single factor in the depletion of the wealth of animal life in nature has been the 'civilised man' operating directly through excessive commercial hunting or, more disastrously, indirectly through invading or destroying natural habitats."

77. In Tarun Bharat Sangh v. Union of India 1992 Supp (2) SCC 448, this Court considered whether mining in the area popularly known as 'Sariska Tiger Park', which was declared as Game Reserve under the Rajasthan Wild Animals and Birds Protection Act, 1951 as a reserve forest under Sections 29 and 30 of the Rajasthan Forest Act, 1953 and as a sanctuary under Section 35 of the Wildlife (Protection) Act, 1972 should be banned because the same was impairing environment and wild life. At one stage, the Court thought of imposing total ban on mining activities but, keeping in view some technical difficulties, it was decided to constitute a Committee headed by former Chief Justice of Delhi High Court to ensure enforcement of the notifications issued under various statutes. Simultaneously, the Court passed an interlocutory order and directed that no mining operation of any kind shall be carried on within the protected area.

78. In M.C. Mehta v. Union of India (1996) 8 SCC 462, this Court considered the impact of mining operations on the ecologically sensitive areas of Badkal Lake and Surajkund in Haryana. After taking cognizance of the

reports submitted by Haryana Pollution Control Board and an expert body, namely, National Environmental Engineering Research Institute (NEERI), the Court accepted the same with certain modifications. Paragraph 8 of the judgment which depicts consideration of the recommendations of NEERI reads thus:

> "We are, therefore, of the view that in order to preserve environment and control pollution within the vicinity of the two tourist resorts it is necessary to stop mining in the area. The question, however, for consideration is what should be the extent of the said area? NEERI in its report has recommended that 200 metre green belts be developed at 1 km radius all around the boundaries of the two lakes. It is thus obvious that 1200 metres are required for the green belts. Leaving another 800 metres as a cushion to absorb the air and noise pollution generated by the mining operations, we are of the view that it would be reasonable to direct the stoppage of mining activity within two km radius of the tourist resorts of Badkal and Surajkund. We, therefore, order and direct as under:
>
> 1. There shall be no mining activity within two km radius of the tourist resorts of Badkal and Surajkund. All the mines which fall within the said radius shall not be reopened.
>
> 2. The Forest Department of the State of Haryana and in particular the Chief Conservator and the District Forest Officer, Faridabad shall undertake to develop the green belts as recommended by NEERI with immediate effect. The NEERI has also suggested the development plan and the type of trees to be planted. We direct the Chief Conservator of Forests, Haryana, District Forest Officer, Faridabad and all other officers concerned of the Forest Department to start the plantation of trees for developing the green belts and make all efforts to complete the plantations of trees before the monsoons (1996).
>
> 3. We direct the Director, Mining and Geology, Haryana, the Haryana Pollution Control Board to enforce all the

recommendations of NEERI contained in para 6.1 of its report (quoted above) so far as the mining operations in the State of Haryana are concerned. All the mine-operators shall be given notices to implement the said recommendations. Failure to comply with the recommendations may result in the closure of the mining operations.

4. We further direct that no construction of any type shall be permitted now onwards within 5 km radius of the Badkal lake and Surajkund. All open areas shall be converted into green belts.

5. The mining leases within the area from 2 km to 5 km radius shall not be renewed without obtaining prior "no objection" certificate from the Haryana Pollution Control Board as also from the Central Pollution Control Board. Unless both the Boards grant no objection certificate the mining leases in the said area shall not be renewed."

79. In M.C. Mehta (Taj Trapezium Matter) v. Union of India (1997) 2 SCC 353, this Court considered whether the foundries, chemical-hazardous industries and the refinery at Mathura should be closed down because they were threat to the very existence of Taj Mahal. In the course of judgment, the Court referred to the reports of various expert bodies including NEERI and the Central Pollution Control Board which unequivocally pointed out the damage caused to the monument by the industries and proceeded to order closure of industries, which were not in a position to make change over to the natural gas by recording the following observations:

"The Taj, apart from being a cultural heritage, is an industry by itself. More than two million tourists visit the Taj every year. It is a source of revenue for the country. This Court has monitored this petition for over three years with the sole object of preserving and protecting the Taj from deterioration and damage due to atmospheric and environmental pollution. It cannot be

disputed that the use of coke/coal by the industries emits pollution in the ambient air. The objective behind this litigation is to stop the pollution while encouraging development of industry. The old concept that development and ecology cannot go together is no longer acceptable. Sustainable development is the answer. The development of industry is essential for the economy of the country, but at the same time the environment and the ecosystems have to be protected. The pollution created as a consequence of development must be commensurate with the carrying capacity of our ecosystems.

Based on the reports of various technical authorities mentioned in this judgment, we have already reached the finding that the emissions generated by the coke/coal consuming industries are air pollutants and have damaging effect on the Taj and the people living in the TTZ. The atmospheric pollution in TTZ has to be eliminated at any cost. Not even one per cent chance can be taken when — human life apart — the preservation of a prestigious monument like the Taj is involved. In any case, in view of the precautionary principle as defined by this Court, the environmental measures must anticipate, prevent and attack the causes of environmental degradation. The "onus of proof" is on an industry to show that its operation with the aid of coke/coal is environmentally benign. It is, rather, proved beyond doubt that the emissions generated by the use of coke/coal by the industries in TTZ are the main polluters of the ambient air."

(emphasis supplied)

80. In M.C. Mehta (Taj Trapezium Pollution) v. Union of India (2001) 9 SCC 235, the Court considered the report of NEERI on the issue of pollution caused by the brick kilns operating in the Taj Trapezium and issued the following directions:

"(1) All licensed brick kilns within 20 km radial distance of Taj Mahal and other significant monuments in Taj Trapezium and Bharatpur Bird Sanctuary shall be closed and stop operating w.e.f. 15-8-1996. We direct the State of U.P. to render all possible assistance to the licensed brick kiln-

owners in the process of relocation beyond Taj Trapezium, if the owners so desire. The closure order is, however, unconditional.

(2) We direct the District Magistrate and the Superintendent of Police concerned to close all unlicensed and unauthorised brick kilns operating in the Taj Trapezium with immediate effect. The U.P. Pollution Control Board (Board) shall file a compliance report within two months.

(3) No new licences shall be issued for the establishment of brick kilns within 20 km radial distance from Taj Mahal, other monuments in Taj Trapezium and Bharatpur Bird Sanctuary."

81. In M.C. Mehta v. Union of India (2004) 12 SCC 118, the Court considered several interlocutory applications filed in the matter by which this Court had stopped mining operations near Badkal Lake and Surajkund. After considering various reports submitted by the expert bodies, the Court observed:

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

upon them. Where the regulatory authorities, either connive or act negligently by not taking prompt action to prevent, avoid or control the damage to environment, natural resources and people's life, health and property, the principles of accountability for restoration and compensation have to be applied.

Development and the protection of environment are not enemies. If without degrading the environment or minimising adverse effects thereupon by applying stringent safeguards, it is possible to carry on development activity applying the principles of sustainable development, in that eventuality, development has to go on because one cannot lose sight of the need for development of industries, irrigation resources and power projects etc. including the need to improve employment opportunities and the generation of revenue. A balance has to be struck. We may note that to stall fast the depletion of forest, a series of orders have been passed by this Court in T.N. Godavarman case 1991 Supp (2) SCC 665 regulating the felling of trees in all the forests in the country. Principle 15 of the Rio Conference of 1992 relating to the applicability of precautionary principle, which stipulates that where there are threats of serious or irreversible damage, lack of full scientific certainty shall not be used as a reason for postponing cost-effective measures to prevent environmental degradation, is also required to be kept in view. In such matters, many a times, the option to be adopted is not very easy or in a straitjacket. If an activity is allowed to go ahead, there may be irreparable damage to the environment and if it is stopped, there may be irreparable damage to economic interest. In case of doubt, however, protection of environment would have precedence over the economic interest. Precautionary principle requires anticipatory action to be taken to prevent harm. The harm can be prevented even on a reasonable suspicion. It is not always necessary that there should be direct evidence of harm to the environment."

The Court then referred to the provisions of the 1957 Act, the Rules framed thereunder as also the laws enacted by Parliament for protection of environment and forests and observed:

"The Aravallis, the most distinctive and ancient mountain chain

> of peninsular India, mark the site of one of the oldest geological formations in the world. Heavily eroded and with exposed outcrops of slate rock and granite, it has summits reaching 4950 feet above sea level. Due to its geological location, the Aravalli range harbours a mix of Saharan, Ethiopian, peninsular, oriental and even Malayan elements of flora and fauna. In the early part of this century, the Aravallis were well wooded. There were dense forests with waterfalls and one could encounter a large number of wild animals. Today, the changes in the environment at Aravalli are severe. Though one finds a number of tree species in the hills, timber-quality trees have almost disappeared. Despite the increase of population resulting in increase of demand from the forest, it cannot be questioned nor has it been questioned that to save the ecology of the Aravalli mountains, the laws have to be strictly implemented. The notification dated 7-5-1992 was passed with a view to strictly implement the measures to protect the ecology of the Aravalli range. The notification was followed more in its breach.
>
> In the aforesaid background, any mining activity on the area under plantation under the Aravalli Project cannot be permitted. The grant of leases for mining operation over such an area would be wholly arbitrary, unreasonable and illogical."

The Court then referred to the report prepared by the Central Mine Planning and Design Institute Limited on Aravalli and accepted the same. The Court finally referred to the judgment in Ambica Quarry Works v. State of Gujarat (1987) 1 SCC 213 and refused to modify order dated 6.5.2002 by which mining activities were banned but appointed a Monitoring Committee for suggesting recommencement of mining in individual cases.

82. In M.C. Mehta v. Union of India (2009) 6 SCC 142, this Court considered the question of whether in view of Section 4A of the 1957 Act, it would be appropriate to exercise power under Article 32 read with Article

142 for suspending mining operations in the Aravalli Hills. After taking cognizance of the fact that indiscriminate mining had resulted in large scale environmental degradation in the area and the arguments of the senior counsel appearing on behalf of the leaseholders, the Court observed:

> "44. We find no merit in the above arguments. As stated above, in the past when mining leases were granted, requisite clearances for carrying out mining operations were not obtained which have resulted in land and environmental degradation. Despite such breaches, approvals had been granted for subsequent slots because in the past the authorities have not taken into account the macro effect of such wide-scale land and environmental degradation caused by the absence of remedial measures (including rehabilitation plan). Time has now come, therefore, to suspend mining in the above area till statutory provisions for restoration and reclamation are duly complied with, particularly in cases where pits/quarries have been left abandoned.
>
> 45. Environment and ecology are national assets. They are subject to intergenerational equity. Time has now come to suspend all mining in the above area on sustainable development principle which is part of Articles 21, 48-A and 51-A(g) of the Constitution of India. In fact, these articles have been extensively discussed in the judgment in M.C. Mehta case (2004) 12 SCC 118 which keeps the option of imposing a ban in future open.
>
> 46. Mining within the principle of sustainable development comes within the concept of "balancing" whereas mining beyond the principle of sustainable development comes within the concept of "banning". It is a matter of degree. Balancing of the mining activity with environment protection and banning such activity are two sides of the same principle of sustainable development. They are parts of precautionary principle.
>
> 47. At this stage, we may also note that under Section 13(2) (qq) of the 1957 Act, rules have been framed for rehabilitation of flora and other vegetation destroyed by

reason of any prospecting or mining operations. Under Section 18 of the 1957 Act, rules have been framed for conservation and systematic development of minerals in India and for the protection of environment by preventing or controlling pollution caused by prospecting or mining operations which also form part of the Mineral Concession Rules, 1960 and the Mineral Conservation and Development Rules, 1988.

48. Under Rule 27(1)(s)(i) of the Mineral Concession Rules, 1960 every lessee is required to take measures for planting of trees not less than twice the number destroyed by mining operations. Under the Mineral Conservation and Development Rules, 1988, vide Rule 34, mandatory provisions for reclamation and rehabilitation of lands are made for every holder of prospecting licence or mining lease to be undertaken and that work has to be completed by the lessee/licensee before abandoning the mine or prospect.

49. Similarly, under Rule 37 of the Mineral Conservation and Development Rules, 1988 the lessee/licensee has to calibrate the air pollution within permissible limits specified under the EP Act, 1986 as well as the Air (Prevention and Control of Pollution) Act, 1981. Under the said Rules of 1988, the most important guidelines are Guidelines 25.26.3, 25.26.4, 25.26.5 and 25.26.6. These guidelines deal with reclamation, planning and implementation, restoration strategy, principles of rehabilitation, rehabilitation of mined-out sites and methods of reclamations (see Handbook of Environment & Forest Legislations, Guidelines and Procedures in India by Ravindra N. Saxena and Sangita Saxena at pp. 1555-62). It may be noted that there are two steps to be taken in the method of reclamation, namely, technical reclamation and biological reclamation. The most important aspect of the above guidelines is making of a rehabilitation plan.

**Conclusion**

50. None of the above provisions have been complied with. In the circumstance, by the present order, we hereby suspend all mining operations in the Aravalli hill range falling in the

State of Haryana within the area of approximately 448 sq km in the districts of Faridabad and Gurgaon, including Mewat till the reclamation plan duly certified by the State of Haryana, MoEF and CEC is prepared in accordance with the above statutory provisions contained in various enactments enumerated above as well as in terms of the rules framed thereunder and the guidelines. The said plan shall state what steps are needed to be taken to rehabilitate (including reclamation) followed by status reports on steps taken by the authorities pursuant to the said plan."

(emphasis supplied)

83. In N.D. Jayal v. Union of India (supra), on which reliance was placed by Shri Jaideep Gupta, this Court considered the issues relating to safety and environmental protection arising out of the construction of Tehri Dam. Some of the observations made in that judgment are extracted below:

"Before adverting to other issues, certain aspects pertaining to the preservation of ecology and development have to be noticed. In Vellore Citizens' Welfare Forum v. Union of India (1996) 5 SCC 647 and in M.C. Mehta v. Union of India (2002) 4 SCC 356 it was observed that the balance between environmental protection and developmental activities could only be maintained by strictly following the principle of "sustainable development". This is a development strategy that caters to the needs of the present without negotiating the ability of upcoming generations to satisfy their needs. The strict observance of sustainable development will put us on a path that ensures development while protecting the environment, a path that works for all peoples and for all generations. It is a guarantee to the present and a bequeath to the future. All environment-related developmental activities should benefit more people while maintaining the environmental balance. This could be ensured only by strict adherence to sustainable development without which life of the coming generations will be in jeopardy.

The right to development cannot be treated as a mere right to economic betterment or cannot be limited as a misnomer to

> simple construction activities. The right to development encompasses much more than economic well-being, and includes within its definition the guarantee of fundamental human rights. The "development" is not related only to the growth of GNP. In the classic work, Development As Freedom, the Nobel prize winner Amartya Sen pointed out that "the issue of development cannot be separated from the conceptual framework of human right". This idea is also part of the UN Declaration on the Right to Development. The right to development includes the whole spectrum of civil, cultural, economic, political and social process, for the improvement of peoples' well-being and realization of their full potential. It is an integral part of human rights. Of course, construction of a dam or a mega project is definitely an attempt to achieve the goal of wholesome development. Such works could very well be treated as integral component for development."

84. In Samaj Parivartana Samudaya v. State of Karnataka (supra), this Court was called upon to consider whether all mining and other related activities undertaken in the forest areas of Andhra Pradesh and Karnataka in violation of order dated 12.12.1996 passed in W.P.(C) No.202/1995 and the 1980 Act should be stopped. After entertaining the writ petition filed under Article 32, the Court appointed a committee known as the Central Empowered Committee and asked it to submit a report on the allegations of illegal mining in Bellary region of the State by M/s. Bellary Iron Ore Pvt. Ltd., M/s. Mahabaleswarapa and Sons, M/s. Ananthapur Mining Corporation and M/s. Obulapuram Mining Company Pvt. Ltd. Subsequently, the scope of inquiry of the Central Empowered Committee was extended to all the mining activities in District Bellary. In furtherance of Court directions, the Central Empowered Committee filed various reports. During the course of hearing,

the leaseholders raised several objections to the reports of the Central Empowered Committee including the one that in view of the scheme of the 1957 Act, the 1980 Act and the Environment (Protection) Act, 1986, the Central Empowered Committee could not have recommended taking of any step or measure beyond what is contemplated by the scheme of these statutes. Their argument was controverted by the learned Amicus who pointed out that the reports of the Central Empowered Committee revealed mass destruction of forest wealth and plundering of scarce natural resources which resulted in irreparable ecological and environmental damage and destruction and such activities need consideration by the Court beyond the limitations set out in the statutes. After considering the rival arguments and adverting to the judgments in Bandhua Mukti Morcha v. Union of India (supra), M.C. Mehta v. Union of India (1987) 1 SCC 395, Taj Trapezium Pollution (supra), Supreme Court Bar Association v. Union of India (1998) 4 SCC 409, the Court observed:

> "The mechanism provided by any of the Statutes in question would neither be effective nor efficacious to deal with the extraordinary situation that has arisen on account of the large scale illegalities committed in the operation of the mines in question resulting in grave and irreparable loss to the forest wealth of the country besides the colossal loss caused to the national exchequer. The situation being extraordinary the remedy, indeed, must also be extraordinary. Considered against the backdrop of the statutory schemes in question, we do not see how any of the recommendations of the CEC, if accepted, would come into conflict with any law enacted by the legislature. It is only in the above situation that the Court may consider the necessity of placing the recommendations made by the CEC on a finer balancing scale before accepting the same. We, therefore, feel uninhibited to proceed to exercise our constitutional jurisdiction to remedy the

enormous wrong that has happened and to provide adequate protection for the future, as may be required."

(emphasis supplied)

In paragraph 41, the Bench dealt with the question whether the recommendations of the Central Empowered Committee with regard to categorization, reclamation and rehabilitation (R&R) plans, reopening of categories 'A' and 'B' mines with conditions and continued closure of category 'C' mines should be accepted and answered the same in the following words:

> "In the light of the discussions that have preceded sanctity of the procedure of laying information and materials before the Court with regard to the extent of illegal mining and other specific details in this regard by means of the Reports of the CEC cannot be in doubt. Inter-generational equity and sustainable development have come to be firmly embedded in our constitutional jurisprudence as an integral part of the fundamental rights conferred by Article 21 of the Constitution. In enforcing such rights of a large number of citizens who are bound to be adversely affected by environmental degradation, this Court cannot be constrained by the restraints of procedure. The CEC which has been assisting the Court in various environment related matters for over a decade now was assigned certain specified tasks which have been performed by the said body giving sufficient justification for the decisions arrived and the recommendations made. If the said recommendations can withstand the test of logic and reason which issue is being examined hereinafter we will have no reason not to accept the said recommendations and embody the same as a part of the order that we will be required to make in the present case."

However, the three-Judge Bench did not deal with the issue relating to impact

of mining operations on ancient monuments. As a matter of fact, vide order dated 3.9.2012, the Bench made it clear that the direction given by it for operation of 'Category A' mines will be subject to any order passed in Jambunathahalli Temple case.

85. Although, the aforesaid judgments were rendered on the petitions filed under Article 32 of the Constitution, we have no hesitation to hold that the ratio thereof can be aptly applied for deciding the appeals arising out of the petitions filed under Article 136 of the Constitution. In two of these cases, i.e., Bandhua Mukti Morcha v. Union of India (supra) and M.C. Mehta v. Union of India (1987) 1 SCC 395, this Court evolved an innovative mechanism for enforcing the fundamental rights of bonded labourers and those who became victims of the operation of hazardous industries. In the next three cases filed by Mr. M.C. Mehta, the Court considered the impact of mining on national assets like water bodies (Badkal Lake and Surajkund in Haryana), the Taj Mahal and the Aarvali Hills, availed the services of expert bodies and accepted their reports for issuing directions to check pollution and environmental degradation. In the second case, the Court ordered closure of all licensed brick kilns operating within a 20 kilometers radial distance of the Taj Mahal, Taj Trapezium and Bharatpur Bird Sanctuary. The law which regulated the brick kilns did not contain any such restriction, but in larger public interest, namely, protection of a national monument and a bird sanctuary, this Court used its power to order closure of all the licensed brick

kilns. In the third case, the Court considered and unequivocally rejected the plea that the mines which were operating under the licences granted in accordance with the 1957 Act and the Rules framed thereunder cannot be closed under the Court's order and held that all mining operations in the Aarvali Hills shall be suspended. In the last mentioned case, which relates to the mines operating in three districts of Karnataka, the Court gave multiple directions for protecting the environment, ecology and forest wealth.

86. The affidavit filed by respondent No.14 on 14.2.2011 gives a vivid description of the mining activities taking place in the vicinity of the temple by using Wagon Blasting Method. Shri T.M. Manjunathaiah (Technical Assistant) reported that during the course of inspection of the temple, he felt tremors due to the explosion and also noticed cracks on the walls and roof due to the impact of the explosion and that the lessee was doing repairs in the form of plastering and cement coating to cover up the cracks on the temple. Respondent No.14 also referred to two inspections carried out by Superintending Archaeologist, Archaeological Survey of India and a team of officers of the Government of Karnataka, who noticed large scale damage to the structure of the temple. This affidavit totally belies the stand of respondent No.4 that mining was done by Controlled Blasting and not by Wagon Blasting Method.

87. On its part the Committee availed the services of INTACH, Bangalore Chapter, Karnataka Remote Sensing Application Centre, ISRO, CIMFR,

Dhanbad and NIT. In paragraph IV of its report under the heading DISCUSSIONS, the Committee unanimously agreed that the mining operations carried out using blasting operations at a distance of less than 200 meters from the temple have already caused irreparable damage to the temple and the eco-environs of its immediate neighbourhood. The Committee noted that the study submitted by Karnataka Remote Sensing Application Centre, ISRO, Bangalore dealt with the mining activities carried out in a radius of one kilometer and two kilometers and illustrated the damage caused to the temple and its immediate environs. The Committee then discussed the conservation plan prepared by Indian National Trust for Arts and Cultural Heritage, Bangalore and observed that a sum of Rs.3,43,19,160 would be required for bringing the temple to its original condition so that the same may regain its past glory. The Committee then noted that the investigating agencies, i.e., CIMFR, Dhanbad and NIT had conducted experimental blasts beyond 200 meters whereas Karnataka Remote Sensing Application Centre had indicated that one of the mines exists within a horizontal distance of 55 meters from the temple premises on the eastern side and, thus, the impact of blasting operation cannot be fully understood and assessed scientifically by the present investigation. The Committee also observed that many of the trial blasts conducted by the investigating agencies had locations having free faces of the working benches and opined that the result of such investigation would show minimum or no impact on architecturally sensitive temple. The Committee

finally declined to accept the suggestions given by CIMFR, Dhanbad and NIT to restrict the mining operations/activities only up to a distance of 200 to 300 meters from Jambunatheswara temple because the data recorded by the expert bodies were based on experimental blasts conducted at individual sites and there was no evaluation/assessment of the cumulative or compounded impact of multiple blasting at different places and altitudes. The Committee noted that the mining operations involving multiple blasting by different leaseholders had already caused substantial damage to the protected monument and the surrounding environment.

88. In our view, the detailed reasons recorded by the Committee, which have been extracted hereinabove, for not accepting the recommendations of the expert bodies about the distance up to which mining should not be allowed are correct and those recommendations cannot be relied upon for accepting the argument of the learned counsel for the State and the private respondents that the recommendations made by the Committee should be rejected. We may hasten to add that the Committee's recommendations are not in conflict with the provisions of the 1957 Act and the Rules framed thereunder. The 1959 Rules and the Karnataka Rules provide for grant of permission/licence for mining in the prohibited/regulated/protected area but the documents produced before this Court do not show that the competent authority had granted permission/licence to any of the private respondents for undertaking mining operations which have the effect of damaging the temple

in question. That apart, the distance criteria prescribed in the 1958 Act, the Karnataka Act and the Rules framed thereunder has little or no bearing on deciding the question of restricting the mining operations near the protected monument which has already suffered extensive damage due to such operations.

89. The argument of learned counsel for the State and the private respondents that ban on mining operations/activities in the Core Zone would adversely impact iron ore supply and will also cause financial loss to the leaseholders as well as the State appears quite attractive but, keeping in view larger public interest and the interest of future generations, we do not think that this would be a very heavy price to be paid by some individuals and the State. This Court has often used the principle of sustainable development to balance the requirement of development and environmental protection and issued several directions for protection of natural resources including air, water, forest, flora and fauna as also wildlife. The Court has also recognized that the right to development includes the whole spectrum of civil, cultural, economic, political and social process, for the improvement of peoples well being and realization of their full potential.

90. In Orissa Mining Corporation Ltd. v. Ministry of Environment and Forest (Writ Petition (C) No.180/2011) decided on 18.4.2013, this Court recognized the customary and cultural rights of indigenous people living in

Kalahandi and Rayagada Districts of Orissa. While considering challenge to order dated 24.8.2010 passed by the Ministry of Environment and Forests whereby the application made by the petitioner for grant of permission for diversion of 660.749 hectares of forest land for mining of bauxite ore in Lanjigarh Bauxite Mines in two Districts of the State was rejected, the three Judge Bench extensively referred to Saxena Committee report, which covered several issues including violation of the rights of tribal groups including primitive tribal groups and the dalit population and proceeded to observe:

> "The customary and cultural rights of indigenous people have also been the subject matter of various international conventions. International Labour Organization (ILO) Convention on Indigenous and Tribal Populations Convention, 1957 (No.107) was the first comprehensive international instrument setting forth the rights of indigenous and tribal populations which emphasized the necessity for the protection of social, political and cultural rights of indigenous people. Following that there were two other conventions ILO Convention (No.169) and Indigenous and Tribal Peoples Convention, 1989 and United Nations Declaration on the rights of Indigenous Peoples (UNDRIP), 2007, India is a signatory only to the ILO Convention (No. 107).
>
> Apart from giving legitimacy to the cultural rights by 1957 Convention, the Convention on the Biological Diversity (CBA) adopted at the Earth Summit (1992) highlighted necessity to preserve and maintain knowledge, innovation and practices of the local communities relevant for conservation and sustainable use of bio-diversity, India is a signatory to CBA. Rio Declaration on Environment and Development Agenda 21 and Forestry principle also encourage the promotion of customary practices conducive to conservation. The necessity to respect and promote the inherent rights of indigenous peoples which derive from their political, economic and social structures and from their cultures, spiritual traditions, histories and philosophies,

> especially their rights to their lands, territories and resources have also been recognized by United Nations in the United Nations Declaration on Rights of Indigenous Peoples. STs and other TFDs residing in the Scheduled Areas have a right to maintain their distinctive spiritual relationship with their traditionally owned or otherwise occupied and used lands."

The Bench then referred to the provisions of the Forest Rights Act, 2006, the rules framed thereunder as also the guidelines issued by the Ministry of Tribal Welfare, referred to the judgment of this Court in Amritlal Athubhai Shah v. Union Government of India (1976) 4 SCC 108, which recognized the power of the State Government to reserve any particular area for bauxite mining for a public sector corporation, and observed:

> "Religious freedom guaranteed to STs and the TFDs under Articles 25 and 26 of the Constitution is intended to be a guide to a community of life and social demands. The above mentioned Articles guarantee them the right to practice and propagate not only matters of faith or belief, but all those rituals and observations which are regarded as integral part of their religion. Their right to worship the deity Niyam-Raja has, therefore, to be protected and preserved.
>
> Gram Sabha has a role to play in safeguarding the customary and religious rights of the STs and other TFDs under the Forest Rights Act. Section 6 of the Act confers powers on the Gram Sabha to determine the nature and extent of "individual" or "community rights". In this connection, reference may also be made to Section 13 of the Act coupled with the provisions of PESA Act, which deal with the powers of Gram Sabha. Section 13 of the Forest Rights Act reads as under:
>
> > "13. Act not in derogation of any other law. – Save as otherwise provided in this Act and the provisions of the Panchayats (Extension of the Scheduled Areas) Act, 1996 (40 of 1996), the

provisions of this Act shall be in addition to and not in derogation of the provisions of any other law for the time being in force."

PESA Act has been enacted, as already stated, to provide for the extension of the provisions of Part IX of the Constitution relating to Panchayats to the Scheduled Areas. Section 4(d) of the Act says that every Gram Sabha shall be competent to safeguard and preserve the traditions, customs of the people, their cultural identity, community resources and community mode of dispute resolution. Therefore, Grama Sabha functioning under the Forest Rights Act read with Section 4(d) of PESA Act has an obligation to safeguard and preserve the traditions and customs of the STs and other forest dwellers, their cultural identity, community resources etc., which they have to discharge following the guidelines issued by the Ministry of Tribal Affairs vide its letter dated 12.7.2012."

91. When seen in this light, the protection of ancient monuments has necessarily to be kept in mind while carrying out development activities. The need for ensuring protection and preservation of the ancient monuments for the benefit of future generations has to be balanced with the benefits which may accrue from mining and other development related activities. In our view, the recommendations and suggestions made by the Committee for creation of Core Zone and Buffer Zone appropriately create this balance. While mining activity is sure to create financial wealth for the leaseholders and also the State, the immense cultural and historic wealth, not to mention the wealth of information which the temple provides cannot be ignored and every effort has to be made to protect the temple.

92. Before concluding, we may deal with the submission of Shri Lalit that

mining can be permitted beyond the distance of 300 meters from the temple by using Ripper Dozer and Rock Breaker machines. According to the learned senior counsel, the use of Ripper Dozer and Rock Breaker will not produce vibration which may cause harm to the temple. In our view, this submission does not merit acceptance because in paragraph 6 of the suggestions made by it, the Committee appointed by the Court has already indicated that mining in the Buffer Zone may be permitted with controlled blasting or without blasting by using Ripper Dozer/Rock Breaker or any other machinery and taking adequate measures towards generation, propagation, suppression and deposition of airborne dust to be closely monitored by experts from IBM etc.

93. In the result, the appeal is allowed and the impugned order is set aside. The report of the Committee is accepted and the State Government is directed to implement the recommendations contained in Part V thereof including the recommendation relating to creation of Corpus Fund of Rs.3,43,19,160 which shall be utilized for implementing the conservation plan for Jambunatheswara temple. However, it is made clear that respondent No.18 shall be free to operate the Beneficiation plant subject to the condition that it shall procure raw material only through E-auction mode.

94. With a view to ensure that other protected monuments in the State do not suffer the fate of Jambunatheswara temple, we direct that the Committee appointed by this Court vide order dated 26.4.2011 shall undertake similar

exercise in respect of other protected monuments in the State in whose vicinity mining operations are being undertaken and submit report to the State Government within a maximum period of nine months. The State Government shall release a sum of Rs.30 lacs in favour of the Committee to meet the expenses of survey, investigation etc. The report submitted by the Committee shall be considered by the Government within next two months and appropriate order be passed.

95. We hope and trust that the Government of India will also appoint an expert committee/group to examine the impact of mining on the monuments declared as protected monuments under the 1958 Act and take necessary remedial measures.

**……J.**
**(G.S. SINGHVI)**

NEW DELHI;
JULY 01, 2013

**……J.**
**(RANJANA PRAKASH DESAI)**