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17.12.2021
Ct. No.10
b.das

W.P.A. 14848 of 2021

(Via Video Conference)

Swapan Sarkar
Vs.
State of W.B. & Ors.

Mr. Piush Chaturvedi
Mr. Mir Anowar
...for the petitioner.

Mr. Chandi Charan De
Ms. R. Rahman
...for the State.

Report submitted by the State authorities is taken on record.

Heard learned counsels for the parties.

The prayer of the petitioner in the writ petition is two-fold:- the petitioners pray for a direction upon the State authorities to consider the representation dated 12th August, 2021 for extension of period of lease on the ground of the pandemic which intervened during existence of the lease. Secondly, the petitioner seeks extension of the lease on the ground that he was handed over possession of the leasehold property much subsequent to execution of the deed of lease.

It is submitted on behalf of the petitioner that he was granted long term mining lease by the respondent

authorities on 10th November, 2008, which was subsequently renewed by an agreement dated 8th August, 2016 for a further period of five years.

The petitioner was given possession of the leasehold property on or after 26th April, 2017. The petitioner prays for a direction upon the concerned authority to extend the period of lease upon consideration of the said period commencing from the delivery of possession of the land to the petitioner.

The petitioner has placed reliance upon an order dated 13th August, 2013 passed by a co-ordinate Bench of this Court in WP 17049 (W) of 2013 and an order of Hon'ble Division Bench of this Court passed on 7th October, 2013 in FMA 2365 of 2013 wherein it was observed that the period of lease ought to be considered from the date of delivery of possession of the property to the incumbent.

Referring to the report submitted by the State respondents and placing reliance on Rule 21 of the West Bengal Minor Mineral Concession Rules, 2016, learned counsel for the State respondents has submitted that in view of the said provision laid down under the 2016 Rules, a mining lease can be extended only upon the petitioner not being able to commence mining operation within a year from execution of the deed of lease or when such operation was discontinued continuously during the said period.

It is not in dispute that the lease was renewed on 8th August, 2016, but possession of the leasehold property was

handed over to the petitioner on or after 26th April, 2017, that is, after a delay of about eight months.

It is not the case of the petitioner that he was unable to commence mining operation within a year from grant of such lease. In fact the petitioner commenced mining operation immediately after possession of the land was delivered in his favour.

Therefore, the provisions of Rule 21 of the West Bengal Minor Mineral Concession Rules, 2016 is not applicable in the facts and circumstances of the instant case.

As laid down by the earlier judgments of this Court, the term of the lease ought to commence from the date when delivery of possession of the leasehold land in question is handed over to the petitioner.

As in the case in hand, the petitioner acquired possession of the land only on or after 26th April, 2017, the period of lease shall be counted from the said date and not from the date of execution of the same. In the result, the period of lease be considered to be valid till 25th April, 2022.

With regard to the other limb of argument made by the petitioner, it appears that the petitioner submitted a representation before the District Magistrate, Purba Burdwan for extension of the period of the validity of the lease, as he was unable to carry on mining operations due

to Covid 2019 pandemic and the prolonged lockdown declared by the government.

Let such representation be considered by the 3rd respondent within one month from the date of communication of this order after giving reasonable opportunity of hearing to the petitioner, in accordance with law.

The petitioner shall also be at liberty to pray for consideration of extension of the period from August, 2021 till resumption of mining operations, the period during which the petitioner was unable to carry on the excavation work.

With the above observations and directions this writ petition WPA 14848 of 2021 is disposed of.

However, there shall be no order as to costs.

Since no affidavit is invited, the allegations contained in the petition are deemed not to be admitted.

Urgent certified website copy of this order, if applied for, be supplied to the parties upon compliance with all requisite formalities.

(Suvra Ghosh, J.)