

IN THE HIGH COURT AT CALCUTTA
Civil Appellate Jurisdiction
(Appellate Side)

F.M.A. 616 of 2018
With

I.A. No. CAN 1 of 2016 (Old No.8611 of 2016)

Niamat Sk.

Vs.

District Magistrate, Birbhum & Ors.

Before: The Hon'ble Justice Arijit Banerjee

&

The Hon'ble Justice Rai Chattopadhyay

For the Appellants	: Mr. Murari Mohan Das, Mr. Sk. Musior Raman, Ms. R. Rehman.
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For the State	: Mr. A. Roy, Ld GP, Mr. T.M Siddiqui, AGP, Mr. D. Ghosh, Mr. T. Karan.
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Hearing Concluded on	: 04.08.2022
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Judgment On	: 24.08.2022
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Rai Chattopadhyay, J.:

- (1)** Appellant/writ petitioner is the unsuccessful applicant before the respondent authority, whose prayer for grant of long term

mining lease has failed and/or not been considered. Thus arose the writ petition being W.P.No 7586(w) of 2016, at his instance. The same has been disposed of by dint of the order dated June 9, 2016, unfavourable to him, leaving him bootless in accomplishing his goal as stated above and impugned in this appeal.

- (2) The question, to be adjudicated in this appeal is precisely whether the **West Bengal Minor Minerals Concession Rules, 2016**, would govern the field, whether application by the appellant for grant of mining lease dated August 5, 2003, shall be non est, in the eye of law, in view of the provisions of the 2016 Rules or the appellant's case would be governed under the old Rules of 2002, i.e, taking into account the date of his first application and if so, whether the purported action/inaction of the respondent authority to deny appellant's prayer, would amount to impairing his legal and constitutional rights.
- (3) The case has a chequered background. Appellant submitted his application for grant of long term mining lease, in the office of

Mining Officer in Charge of Suri Zone, in district Birbhum, on August 5, 2003. He sought permission respecting 26.00 acres of land, being Plot No 1481 to 1558, 1560(P), 1212(P), of Mouza – Palitpur, J.L.No.132 under Nanur Police Station. Respondent's inaction in considering his application, forced him to file his first writ petition in this court being W.P. No 20451(w) of 2004, in which an order was passed on November 9, 2004, as narrated below :

“Having heard the Ld. Counsel appearing for the respective parties and considering the facts and circumstances of this case, I dispose of this writ petition by directing the respondents to consider and dispose of the application of the petitioner for grant of long term mining lease in respect of the plot in question as early as possible but positively within a period of three months from date.

Meanwhile, there will be an interim order to the effect that the petitioner shall be at liberty to extract sand from the river bed in question upon payment of usual royalty and other dues to the State Respondents. The petitioner shall once in a week intimate to the official concerned about the extraction of the sand and the said authority shall impose the royalty at the rate chargeable and payable under the West Bengal Minor Mineral Rules.

However, the petitioner would be allowed to extract sand in the event the plot in question is on the river bed of Mayurakshi.

The petitioner shall make payment of such royalty regularly and in default of making such payment, the respondent authorities would be at liberty to take

appropriate steps against the petitioner in accordance with law.”

- (4) According to the appellant/writ petitioner, respondents have never complied with court's order, as above, by considering his application, though accepted royalty and cess from him, till December 30, 2013, in the event of his extracting sand as per court's directions, as above. It is stated that the respondent authority had also issued successive quarry permit/road challan, during the said period of time, in favour of the appellant/writ petitioner.
- (5) The next writ petition, being W.P.No. 710(w) of 2007, was moved by the appellant, in this court, challenging grant of mining lease by the authorities, in favour of some other person, with respect to the same plot of land, for which the appellant had already applied and with the allegation that the authority has done so, keeping the application of the appellant pending. The Ld. Single Bench protected the appellant there, by an order dated March 14, 2007, restraining the respondent authorities from handing over possession of the land to the lessee. The

lessee being aggrieved, had preferred to file an appeal being MAT No. 1588 of 2007 against said order dated March 14, 2007, which was dismissed by the Hon'ble Appeal Bench.

- (6) After 2007, appellant's fate unfolded itself against the backdrop of issuance of Notice Inviting Tender dated May 18, 2012, by the respondent No. 2. Respondent invited tender in sealed cover, for auction, for grant of mining lease of sand, as per Rule 16B of the West Bengal Minor Minerals Rules 2002. However, the said Notice Inviting Tender dated May 18, 2012, was challenged in a writ petition and vide an order of this court dated July 17, 2012, operation of the same was stayed.
- (7) According to the appellant, during pending of that writ petition, the respondent No. 2 issued another Notice Inviting Tender on September 24, 2012. Appellant challenged the same by filing writ petition No. W.P. 25401(w) of 2012 and obtained an order, dated December 20, 2012, as follows :

“The operation of the impugned notice dated 24.09.2012 issued by the District Land and Land Reforms Officer and Additional District Magistrate,

Birbhum, appearing in page No.49 will remain stayed until further order.”

- (8)** Thereafter, in 2016, the appellant/writ petitioner has filed the present writ petition being W.P.No. 7586(w) of 2016, seeking redress of the alleged inaction by the respondent authorities to consider his application for grant of mining lease and also for an order of the Court, permitting him to do the mining works. Ld. Single Bench has dismissed the said case vide its order dated June 9, 2016, which is impugned in this appeal.
- (9)** In the order impugned, the Court has considered the report in the form of an affidavit filed by the respondent authority and also an order of National Green Tribunal, Eastern Zone Bench, Kolkata dated April 19, 2016, by dint of which it prohibited lifting sand from the riverbed and has come to a finding that the writ petitioner is not entitled to any relief and dismissed the writ petition.
- (10)** The crux of appellant/writ petitioner's contention in this case is that, in spite of his whole hearted efforts, the respondent

authorities have neither complied with this court's order dated November 9, 2004, by considering his application for grant of lease, nor has it permitted him to extract sand in lieu of royalty and cess, in terms of the said order and as a stipulated interim measure. Ld. Advocate, Mr. Das has very strenuously argued on behalf of his client that, all through these years of litigation, the respondents have always been restrained by the Court, in its endeavor to lease out the land for mining purposes, showing illegality and impropriety of the respondent's action, on the face of it. It is submitted that respondent's inaction in considering appellant's application is not only flouting court's order, but also injuring and jeopardizing his statutory and constitutional rights. He further submitted that, for all purposes his client's case would fall within the purview of the Rules of 2002, in view of the date of his application, i.e, August 5, 2003 and not under the Rules of 2016. He has pursued that the 2016 Rules has got no retrospective effect, in order to bring in its fold appellant's

application dated August 5, 2003, when the old Rules of 2002 was in vogue.

(11) Mr. Siddiqui, Ld. Advocate defends the respondents and also the order of Ld. Single Bench, impugned in this appeal. According to him, after promulgation of the West Bengal Minor Minerals Concession Rules, 2016, appellant's application submitted manually for grant of mining lease is a nugatory process only and would not have any force, in view of the new law as above. He has referred to **subsection (4) of section 10B** of the Mines & Minerals (Development & Regulation) Act, 1957, to submit that, the Act provides for grant of mining lease only by way of e-auction. He has also referred to **Rule 61** thereof, to submit that, after July 29, 2016, i.e, the date of the said Rules coming into force, all previous applications became ineligible under the same. According to him this provision of the new Rules, 2016, has rendered appellant's application dated August 5, 2003, non est, in the eye of law. He submits that appellant has no remedy left to be granted either by the respondent

authorities or by this Court and prays that the appeal may be dismissed. Ld. Advocate has relied on the following two judgments, in support of his argument :

(i) (1981) 2 SCC 205 [State of Tamil Nadu vs. M/s Hind Stone &Ors].

(ii) (2012) 4 SCC 629 [Deepak Kumar &Ors vs. State of Haryana &Ors].

(12) It would be profitable to first go through the relevant statutory provisions, which are mentioned bellow :

“Mines & Minerals (Development & Regulation) Act, 1957

Section- 10B

Grant of mining lease in respect of notified minerals through auction.

Sub-section (4)

For the purpose of granting a mining lease- in respect of any notified mineral in such notified area, the State Government shall select, through auction by a method of competitive bidding, including e-auction, an applicant who fulfills the eligibility conditions as specified in this Act.”

“West Bengal Minor Minerals Concession Rules, 2016.

Rule- 61

Declaration of ineligibility of the pending minor mineral applications for mining lease including the applications of reclassified major minerals.

All applications for mining lease of minor minerals including the reclassified minor minerals vide SO No.- 423€ dated 12th February, 2015 received prior to the

giving effect to this rules irrespective of- its duration of pendency shall become ineligible.

Provided that if the applicant has been issued a Grant Order or Letter of Intent (LoI) or any other Government Order requiring the alteration of applicant's position then his mining lease application may be considered after due compliance of all the necessary conditions."

(13) Needless to say that Rule 38 of 2016 Rules and the West Bengal Minor Mineral (Auction) Rules, 2016, are also in place to fortify the provisions of the statute, as mentioned above.

(14) In the considered opinion of the court, **Rule-61** of West Bengal Minor Minerals Concession Rules, 2016 is an unambiguous, clear and categorical provision of law, which provides with utmost precision, the methodology to deal with an application for grant of mining lease, which might have been filed before coming into force of 2016 Rules. It mandates that any such application, irrespective of its duration of pendency, shall become ineligible, after the 2016 Rules have come into force. We are constrained to hold that the appellant's case falls squarely within the four corners of the said provision of the 2016 Rules. Appellant avers and respondent doesn't challenge

that he had made an application for grant of mining lease on August 5, 2003. Appellant urges that his such application cannot cease to exist by operation of Rule 61, of the 2016 Rules in view of the facts that firstly, the court has directed the respondent to consider and dispose of the same, which exercise is yet to be done and secondly, that in terms of Court's order dated November 9, 2004, he has been allowed to execute extraction works, in lieu of royalty and cess, as applicable. He has also been issued permits and road challans etc. This exercise continued till 2013. The order of this Court dated November 9, 2004, was interim in nature. Otherwise also, the alleged noncompliance of the said order is agitated by the appellant only in the present writ petition, i.e, on April 19, 2016 and not before that. By the time he agitates the alleged noncompliance by the respondents, the new rules have already come into force. Thus the sluggish appellant has taken the flux of time to his pitfall and the resultant disadvantage he has to endure. Benefits

under 'proviso' to Rule 61, of 2016 Rules, are not applicable in case of the appellant.

(15) It is further notable that vide **Rule 62** of the said Rules, 2016, the West Bengal Minor Mineral Rules, 2002, has been repealed.

Hence, its application in his case, as the appellant tries to establish, is wholly unfounded.

(16) In the case of **Deepak Kumar**, the Hon'ble Apex Court has been pleased to hold that,

“While it is true that such applications should be dealt with within a reasonable time, it cannot on that account be said that the right to have an application disposed of in a reasonable time clothes an applicant for a lease with a right to have the application disposed of on the basis of the rules in force at the time of the making of the application. No one has a vested right to the grant or renewal of a lease and none can claim a vested right to have an application for the grant or renewal of a lease dealt with in a particular way, by applying particular provisions. In the absence of any vested rights in anyone, an application for a lease has necessarily to be dealt with according to the rules in force on the date of the disposal of the application despite the fact that there is a long delay since the making of the application.”

(17) The provisions of the Rules of 2016 and the findings of the Apex Court as discussed above, clearly indicate that mere pendency of the application of the appellant with the respondents would not vest with him any right to have the same disposed of under the

2002 Rules, which was operative at the time of making of the application by him. It is sacrosanct that he would not have any vested right to get his application disposed of beyond the scope of 2016 Rules or obtain any mining lease.

(18) On the discussions as above, we find no substance in the arguments made on behalf of the appellant, that alleged inaction of the respondent authorities, in considering his application for grant of mining lease, has in any way jeopardized his legal or constitutional rights or that the respondent authorities have acted in anyway not commensurate with law. As such, findings of Ld. Single Bench made in the impugned order dated June 9, 2016, are also found to be unblemished. In our considered opinion, there is no ground for this appeal court, to interfere with the same.

(19) Hence, the impugned order dated June 9, 2016, in W.P.No 7586(w) of 2016, is hereby affirmed.

(20) The present appeal being FMA No. 616 of 2018 along with I.A No. CAN 1 of 2016 (Old No.8611 of 2016), are hereby dismissed.

(21) Interim order, if any, stands vacated.

(22) Urgent certified website copies of this judgment, if applied for, be supplied to the parties subject to compliance with all the requisite formalities.

I agree.

(Arijit Banerjee, J.)

(Rai Chattopadhyay, J.)