

28.02.2022
Item No. 12
Court No.6.
S. De

Through Video Conference

**M.A.T. 60 of 2022
I.A. No. CAN 1 of 2022**

**Jagannath Hansda.
Vs
State of West Bengal & Ors.**

Mr. Milan Kumar Bhattacharyya, Ld. Sr. Adv.
Ms. Sulagna Bhattacharyya,
...for the appellant.
Mr. Sirsanya Bondyopadhyay,
...for the State.

By consent of the parties the appeal and the connected application are taken up together for hearing.

This appeal is preferred against a judgment and order dated December 22, 2021 whereby W.P.A. 6269 of 2020 was disposed of.

The writ petitioner is in the business of sand extraction from riverbeds in terms of licence granted to him by the competent authority.

The writ petitioner was aggrieved by the rejection of his application for grant of short term mining lease (STML) in respect of the relevant plot. One of his grievances was that the Revenue Inspector, after due inspection of the concerned plot, returned his finding that STML may be granted in favour of the petitioner in respect of the relevant plot. The writ

petitioner challenged the rejection of his application before a learned Single Judge by filing W.P. No. 18410(W) of 2018. By an order dated December 19, 2018, the order of the competent authority (ADM and DL & LRO) was permanently stayed. The Authority was directed to revisit the recommendation dated 27th January, 2014, made by the Revenue Inspector on an *in situ* basis and take a just decision. The decision was to be taken purely on merits. The competent authority revisited the matter and again rejected the petitioner's application for STML vide order dated February 12, 2020. This order was challenged before the learned Single Judge.

The learned Single Judge disposed of the writ petition by granting liberty to the writ petitioner to make e-application in terms of the West Bengal Minor and Mineral (Concession) Rules 2016. The learned Judge refused to interfere with the order of rejection of the writ petitioner's application inter alia on the ground that the writ petitioner has an alternative remedy by way of an appeal under Rule 51 of the 2016 Rules. However, the learned Single Judge also held on merits that the writ petitioner is not entitled to STML.

We have heard Mr. Bhattacharyya, learned senior advocate for the appellant at length. We have also heard Mr. Bondyopadhyay, learned Junior Standing Counsel for the State.

We are of the view that since an alternative remedy contemplated under the concerned Rules is available to the writ petitioner, the learned Judge ought to have merely granted liberty to the writ petitioner to approach such appellate forum and not gone into the merits of the case and record findings on merits.

Be that as it may, we agree with the conclusion of the learned Single Judge to the extent the writ petition was in effect dismissed. We are conscious that existence of an efficacious alternative remedy is not an absolute bar to the maintainability of a writ petition. However, when such a remedy is available to the aggrieved person, ordinarily the High Court will not interfere in the exercise of its High Prerogative Writ Jurisdiction. We grant liberty to the appellant to approach the appellate authority contemplated under the 2016 Rules with his grievance within four weeks from date. If the writ petitioner approaches the appellate authority within the time period indicated above, and not otherwise, the appellate authority shall consider and decide the appeal on merits, in accordance with law and the applicable rules, without going into the question of time bar, after observing the principles of natural justice. The appellate authority shall decide the appeal if filed within the prescribed time period, uninfluenced by any observation in the

order dated December 22, 2021 passed by the learned Single Judge in W.P.A. 6296 of 2020.

We have not gone into the merits of the case. All questions are left open.

M.A.T. 60 of 2022 is, accordingly, disposed of along with the connected application being I.A. No. CAN 1 of 2022.

Urgent certified photostat copy of this order, if applied for, shall be given to the parties as expeditiously as possible on compliance with all the necessary formalities.

(Kausik Chanda, J.)

(Arijit Banerjee, J.)