

S/L 1
(suppl.)
25.02.2022
Court. No. 19
GB

W.P.A. 3389 of 2022

Tofiqul Islam @ Tafikul Islam
VS
The State of West Bengal & Ors.

*Mr. Sanjay Saha,
Mr. Probal Sarkar.*

...for the Petitioner.

*Mr. Susanta pal,
Mr. Prabir Kumar Ray.*

...for the State.

*Mr. Sunil Gupta,
Mr. Hasibul Islam.*

...for the Respondent Nos.3 & 4.

This matter was mentioned by the learned advocate for the petitioner yesterday for being listed today, that is, February 25, 2022 in view of the urgency involved. The auction which is the subject matter of challenge in the writ petition is to be opened at 12 noon. By mistake, the department failed to list the matter despite directions of the Court and as such, the Court directed a supplementary list be prepared. The petitioner was directed to intimate the same to all the respondents. Accordingly, the matter has been listed in the supplementary list and is being taken up in the presence of all the parties.

The petitioner is aggrieved by an order dated February 21, 2022 passed by the Executive Officer, Bhagwangola-I Panchayat Samity, Bhagwangola, Murshidabad. The said order was passed pursuant to a direction of this Court dated February 14, 2022 in WPA No. 1172 of 2022. The first round

of litigation arose when the petitioner was aggrieved by the inaction on the part of the authorities in considering his prayer for further extension of the lease of the Sundarpur Ferry Ghat, which has been granted to the petitioner for the financial year 2020-21. The lease was granted to the petitioner from March 1, 2021 to February 28, 2022. The petitioner had filed a representation before the authority praying for extension of the said lease to enable the petitioner to make up for the losses suffered during the lockdown period.

Accordingly, the order impugned has been passed with reasons. It appears that the Artha Unnayan-O-Parikalpana Sthayee Samity, that is the relevant authority to decide allotments of such nature, held a meeting and decided to go for fresh auction of the ferry ghat in order to maximise revenue generation of the said Panchayat Samiti. It also appears that the petitioner was already granted extension of two months on an earlier occasion when the ferry ghat was inoperative due to full lockdown. The authorities considered the prayer of the petitioner and came to a specific finding that during the period when the ferry ghat was operating for the financial year 2020-21, partial lockdown had been suffered, but the situation did not warrant a further extension of the period in view of the anticipated loss of revenue. The petitioner had prayed for extension upon paying an enhanced rate of 5% over and above Rs.5,10,000/. It is also on record that considering the losses suffered during the complete lockdown, the petitioner had been

allotted the ferry ghat at a much lower lease amount of Rs.5,10,000/-, although the original lease rent which had been decided by the authorities was Rs.17,11,050/-.

In the decision of **The Goa Foundation Vs. M/s. Sesa Sterlite Limited & Ors, [Special Leave to Appeal (Civil) No. 32138 of 2015]** the Hon'ble Apex Court had held as follows:-

“60. ****The State is duty-bound to adopt the method of auction by giving wide publicity so that all eligible persons can participate in the process.” This led to the belief that the view of this Court was that natural resources should be alienated or disposed of only by auction and by no other method. The Court held in paragraphs 95 and 96 of the Report as follows:

‘This Court has repeatedly held that wherever a contract is to be awarded or a licence is to be given, the public authority must adopt a transparent and fair method for making selections so that all eligible persons get a fair opportunity of competition. To put it differently, the State and its agencies/instrumentalities must always adopt a rational method for disposal of public property and no attempt should be made to scuttle the claim of worthy applicants. When it comes to alienation of scarce natural resources like spectrum, etc. it is the burden of the State to ensure that a non-discriminatory method is adopted for distribution and alienation, which would necessarily result in protection of national/public interest.

In our view, a duly publicised auction conducted fairly and impartially is perhaps the best method for discharging this burden and the methods like first-come-first-served when used for alienation of natural resources/public property are likely to be misused by unscrupulous people who are only interested in garnering maximum financial benefit and have no respect for the constitutional ethos and values. In other words, while transferring or alienating the natural resources, the State is duty-bound to adopt the method of auction by giving wide publicity so that all eligible persons can participate in the process.” [Emphasis supplied by us].”

70. In his concurring opinion, Justice Khehar took the view (in paragraph 186 of the Report) that: “...when natural resources are made available by the State to private persons for commercial exploitation exclusively

for their individual gains, the State's endeavour must be towards maximisation of revenue returns.” [Emphasis supplied by us] The learned judge concluded his opinion by agreeing that an auction is one of the price recovery mechanisms, but not the only one for allocation of natural resources. “That should not be understood to mean that it can never be a valid method for disposal of natural resources.” It was further held that natural resources cannot be alienated by way of largesse – there must be a reciprocal consideration either in the form of earning revenue or sub-serving the common good or both. The learned judge had this to say:

“The policy of allocation of natural resources for public good can be defined by the legislature, as has been discussed in the foregoing paragraphs. Likewise, policy for allocation of natural resources may also be determined by the executive. The parameters for determining the legality and constitutionality of the two are exactly the same. In the aforesaid view of the matter, there can be no doubt about the conclusion recorded in the main opinion that auction which is just one of the several price recovery mechanisms, cannot be held to be the only constitutionally recognised method for alienation of natural resources. That should not be understood to mean that it can never be a valid method for disposal of natural resources (refer to paras 186 to 188 of my instant opinion). I would, therefore, conclude by stating that no part of the natural resource can be dissipated as a matter of largesse, charity, donation or endowment, for private exploitation. Each bit of natural resource expended must bring back a reciprocal consideration. The consideration may be in the nature of earning revenue or may be to “best subserve the common good”. It may well be the amalgam of the two. There cannot be a dissipation of material resources free of cost or at a consideration lower than their actual worth. One set of citizens cannot prosper at the cost of another set of citizens, for that would not be fair or reasonable.” [Emphasis supplied by us].”

Although Mr. Saha, learned advocate for the petitioner submits that the petitioner was subsequently willing to pay an enhanced rate of 10% over and above Rs.5,10,000/-, the authorities thought it fit upon a threadbare discussion on the issue and after considering the financial condition of the Panchayat Samity, that it would be

beneficial for the public and the Samity and mainly for development of the area in question that an open auction must be held. The petitioner's prayer was not accepted.

This is a policy decision taken by the authority. The public authority has the right to take such policy decisions especially to ensure that maximum revenue is generated. The revenue generated is to be used in public interest. There are no personal allegations against any of the authorities. The Court does not find any arbitrariness or irrationality in the reasoning. However, as the petitioner had been running the ferry ghat for sometime, this Court is of the view that the petitioner must be given the right to participate in the bidding process. Although, February 25, 2022 has been fixed for holding the open auction at 12 noon., the petitioner is granted liberty to deposit the relevant documents along with earnest money immediately and the open auction shall not be held before 2 p.m. The earnest money and the documents to be deposited by the petitioner shall be accepted by the Panchyat Samity on the basis of the learned advocates communication via whatsapp, email and also telephonic, as there is no time left to enable the Court to supply a copy of the order. As all the respondents are represented before the Court, the order of this Court must be complied with. The petitioner's documents will be considered in accordance with law in the open auction along with all other eligible candidates. This order should not be construed as a decision on the eligibility of the petitioner.

Accordingly, the writ petition is disposed of.

However, there will be no order as to costs.

All the parties are directed to act on the basis of the learned advocates' communication.

(Shampa Sarkar, J.)