IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
APELLATE SIDE

The Hon'ble **JUSTICE SUVRA GHOSH**

W.P.A. 9405 of 2021

Md. Humayun Kabir.
Vs.
The State of West Bengal & Ors.

For the Petitioner:	Mr. Milan Bhattacharjee, Adv., Mrs. Sulagna Bhattacharjee, Adv.
For the State:	Mr. T.M. Siddique, Adv. Mr. Nilotpal Chatterjee, Adv.,
Hearing Concluded on:	31.08.2022
Date:	20.09.2022

SUVRA GHOSH, J. :-

1. The petitioner has assailed the order impugned passed by the District Magistrate, Birbhum on 5th February, 2021, terminating the long term mining lease granted to the petitioner on 21st August, 2018.

2. Being the highest bidder in an e-auction floated on 27th October, 2016 for extraction of sand from the sand block in question and upon depositing one third of the bid amount, letter of intent was issued in favour of the petitioner on 25th April, 2017 and subsequently upon completion of the official paraphernalia, deed of lease was executed in favour of the petitioner in

respect of the sand block on 21st August, 2017. After continuing mining operation for some time, the petitioner was verbally asked to stop operation of the sand block without any reasoned communication being made to him despite the petitioner depositing Rs. 32,29,500/- with the District Magistrate's Office. Out of transit pass/challan issued for more than 3.10 lakhs cubic feet of sand the petitioner could only utilise 0.50 lakhs cubic feet upon payment being made for the same and the remaining 2.60 lakh cubic sq.ft challan was returned to the office of the District Land and Land Reforms Officer. The lease of the petitioner was terminated prematurely on the ground that the sand block allotted to the petitioner was situated between two railway bridges and was within the restricted zone.

3. One Lakshman Baski who is similarly situated with the petitioner and was granted lease of a sand block in river bed Mayurakshi was accommodated in an alternative sand block as there was some difficulty and dispute in carrying on mining operation in the earlier block. The petitioner demanded equal treatment and requested grant of an alternative sand block in place of the earlier block in order to enable him to carry on mining operation but such request fell on deaf ears. The petitioner has been subjected to discriminatory and arbitrary treatment by the authority resulting in huge financial loss incurred by him as the sand block allotted to him is not operational at all.

4. Learned counsel for the petitioner has drawn the attention of the Court to the deed of lease issued in favour of the Lakshman Baski on 31st August, 2017 and a subsequent lease executed in his favour in respect of an

alternative sand block on 14th June, 2018 and has submitted that the second deed was executed without fresh bidding.

5. Referring to section 4A(3) of the Mines and Minerals (Development and Regulation)Act, 1957, learned counsel has submitted that no opportunity of hearing was granted to the petitioner in terms of this provision of law prior to making a premature termination of the lease.

6. Though at the outset, learned counsel has expressed his reservation in regard to the affidavit-in-opposition filed by the respondents as the same was affirmed by an officer of lower rank, he has relied upon the contents of the opposition as follows:-

Page-67 H is the approval for grant of compensatory concession site to Lakshman Baski. Page -72 records the name of the petitioner as a lease holder who has deposited one third or above but below two third of the bid amount and also indicates existence of rail bridge within 100 metres of the sand block allotted to the petitioner. Page -75 C of the affidavit-in-opposition speaks of an information that a bridge is being constructed within 300 metres of the sand block in question. Page -78 (3) which is part of the recommendation of the District Committee speaks about recommendation by the inspecting team for permanent closure of the mining activities in the sand block allotted to the petitioner as the sand block is situated within the restricted zone and requires the District Magistrate to take appropriate steps for premature termination of the lease and deal with any question of refund of the bid amount if situation so arises. Page -82 which is a sketch map indicates the location of the sand block in question.

7. Referring to page -11 of the affidavit-in-opposition learned counsel for the petitioner has submitted that necessary survey was made by the Government prior to floating of the notice inviting tender and the lease was granted upon satisfaction that the sand block was fit for mining operation. There being no fault on the part of the petitioner in premature termination of the lease, it is incumbent upon the authority to grant an alternative block to the petitioner so that he can proceed with the mining operation. The petitioner is suffering huge loss due to premature termination of the lease and submitted several representations before the authority requesting grant of an alternative sand block, which were not heeded to. The petitioner also agrees to clear all the outstanding dues and submits that he was unable to deposit the second and third instalments of the bid amount due to premature termination of the lease and such, the question of payment of interest on such dues does not arise.

8. Learned counsel for the petitioner has placed reliance on the following authorities in:-

(i) Barium Chemicals Ltd. & Anr v/s. Sh. A.J. Rana & Ors. reported in AIR 1972 Supreme Court 591,

(ii) Divisional Personnel Officer, Southern Railway & Anr. v/s. T.R. Challappan reported in AIR 1975 Supreme Court 2216,

(iii) Oriental Bank of Commerce v/s. Sunder Lal Jain & Anr. reported in (2008) 2 Supreme Court Cases 280,

(iv) Whirlpool Corporation v/s Registrar of Trade Marks, Mumbai & Ors. reported in (1998) 8 Supreme Court Cases 1 in support of his contention.

9. At the outset, learned counsel for the State respondents has challenged the maintainability of the writ petition on the ground that the order impugned passed by the District Magistrate, Birbhum on 5th February, 2021 is amenable to appeal under Rule 51 of the West Bengal Minor Minerals Concession Rules, 2016 and the writ petition is not maintainable in view of availability of alternative efficacious remedy. The petitioner ought to have preferred an appeal under Rule 51 against the order impugned and not challenged the said order before the Writ Court.

10. The terms of the lease agreement were not complied with by the petitioner. The petitioner claims parity with Lakshman Baski who was allotted an alternative block by the authority. In the case of Sri Baski there was certain discrepancy regarding geostationary parameters which resulted in location of the sand block allotted in his favour on the bank of the river in place of the riverbed area. As per the geostationary coordinates mentioned in the relevant NIT, the District Committee, in its meeting held on 3rd May, 2018 decided to grant another concession site to Sri Baski. The petitioner's case can be distinguished from that of Sri Baski wherein the sand block allotted to the petitioner falls in the restricted zone close to bridge structures and a primary school. Also, the rule of equity cannot be invoked in derogation of

statutory provisions and one cannot claim benefit in a contractual matter beyond what he is statutorily entitled to by such contract.

11. Referring to clause 1.3 of the notice inviting tender for grant of mining lease issued on 27th October, 2016, learned counsel submits that each intending bidder has the responsibility to conduct his own investigation and analysis for verifying the accuracy, adequacy, correctness, reliability and completeness of the assumptions, assessments, statements and information contained in the bid document and obtain independent advice from appropriate sources. No such site visit was undertaken by the petitioner, also in terms of clauses 6.4 and 6.5 of the document. Page 50 of affidavit-in-opposition which demonstrates the terms and conditions for grant of mining lease over concession areas being mentioned as sand blocks shows that the said blocks are described on " as is where is and what is basis".

12. Letter of intent was issued in favour of the petitioner by the respondents on 25th April, 2017 upon the petitioner depositing one third of the bid amount. The authority offered to refund the said amount to the petitioner which was refused by the latter. The petitioner has also failed to pay the balance amount in two equal instalments as prescribed in Rule 10(2) of the Auction Rules, 2016.

13. Learned counsel has drawn the attention of the Court to Clause 3(j) of part VII of the lease deed which authorises the department to stop mining during the lease period in case of possible danger due to mining. Clause 3(m) prohibits mining operation within a distance of 50 meters from any bridge,

other public work or building, except with prior permission of the Government and also in terms of clause 3(n), mining within a specified distance of road bridge has been banned by the State Government in the interest of safety of the bridge concerned. Clause 20 of part VII says that upon receipt of notice in writing on behalf of the State Government/District Authority stating that the lessee's operation on the land involves any danger to the suitability of any bridge or hydraulic structure either existing or under construction, the lessee is required to desist from such operation forthwith and shall not claim any compensation for stoppage of work in respect of the delineated area.

14. Rule 10(2) of the West Bengal Mining Minerals (Auction) Rules, 2016 has not been complied with by the lessee/petitioner. The lease deed was executed upon the lessee agreeing to comply with all the terms and conditions mentioned in the notification published on 23rd May, 2017 as recorded in part X of the lease which also indicates that breach of any of the conditions mentioned in the said notification by the lessee shall result in termination/cancellation of the lease.

15. The show cause notice issued to the petitioner on 08th May, 2018 providing him the last chance to deposit the remaining bid amount within 18th May, 2018 and to appear before the authority on 21st May, 2018 with a written explanation for delay in depositing the amount was also not heeded to.

16. In a letter dated 16th March, 2018 the petitioner sought extension of time for a period of 8 months for depositing the residual amount stating that his

business was running at a loss due to “ill health and financial hardship”, thereby indicating that the petitioner was carrying on business on the said date. Issuance of road challan in favour of the petitioner from July, 2017 to September, 2017 on 22nd August, 2017 pursuant to request of the petitioner dated 21st August, 2017 and issuance of road challan from January 2018 to March, 2018 vide memo dated 29th January, 2018 also suggest continuation of sand mining by the petitioner during the said period.

17. The order impugned passed on 5th February, 2021 records that the lessee failed to make payment of applicable royalty and cesses together with applicable contribution to the District Mineral Financial and Income Tax from source against the second quantum of sand extraction for the period January to March 2018 though operation in the sand block continued for a period of 7 months between the date of registration of the lease deed and the month of March, 2018. The dues of the petitioner have been elaborately calculated in the said order, directing the petitioner to deposit the amount of Rs. 5,59,403 payable towards dues in respect of royalty, cess, DMF contribution and income tax deduction from source and steps for refund of Rs. 13,79,605 was directed to be taken. Such premature termination of lease is authorised by section 4A (2) of the Mines and Minerals (Development and Regulation) Act, 1957. It is settled law that no person has any vested right in mining leases and the authority has committed no illegality in terminating the lease prematurely.

18. Learned counsel has referred to the authorities in A.H. Jaffer & Sons and others v/s. Union of India, through Secretary, Ministry of Steel and Mines,

New Delhi and others reported in 1985 SCC online Bombay 98 and Monnet Ispat and Energy Limited v/s. Union of India and Others reported in (2012) 11 Supreme Court Cases 1 in support of his contention.

19. I have considered the submission made by learned counsels for the parties and the material on record.

20. Learned counsel for the respondent has challenged the maintainability of the writ petition on the ground that the order impugned dated 5th February, 2021 is appealable under Rule 51 of the West Bengal Minor Minerals Concession Rules, 2016. Rule 51 of the 2016 rules enumerates that any person aggrieved by an order made by the District Authority or by any officer duly authorised by the District Authority in exercise of the powers conferred upon him by these rules may prefer an appeal against the order within 30 days from the date of communication of the order to him.

21. At this juncture it shall be useful to refer to the authority in Whirpool Corporation v/s. Registrar of Trade Marks, Mumbai and others reported in (1998) 8 Supreme Court Cases 1 wherein the Hon'ble Supreme Court has held that alternative remedy would not operate as a bar in at least three contingencies:-

(i) Where the writ petition seeks enforcement of any of the fundamental rights; or

(ii) Where there is violation of principles of natural justice; or

(iii) Where the order or the proceedings are wholly without jurisdiction or the vires of an Act is challenged.

In the present writ petition, the petitioner pleads violation of the principles of natural justice on the ground that the order impugned was made without considering the submission made by the petitioner and also , there has been discrimination in the approach of the authority in dealing with the cases of the petitioner and Lakshman Baski who has been allotted an alternative plot by the authority.

22. In view of the fact that the petitioner pleads violation of the principles of natural justice, the writ petition is covered by one of the contingencies laid down by the Hon'ble Supreme Court and is therefore maintainable in its present form and prayer.

23. On merits, the petitioner, being the highest bidder in e-auction for extraction of sand from sand block no. Bir/Sainthia/Ainua/049/2016 floated on 27th October, 2016 and upon depositing one third of the bid amount and complying with other formalities, long term mining lease was executed in favour of the petitioner for a period of five years on 21st August, 2017. The petitioner is aggrieved by the fact that after continuing with mining operation for sometime he was verbally asked to stop operation of the sand block and was able to utilise only 0.50 lakhs cubic feet despite being issued transit challan for 3.10 lakhs cubic feet. The petitioner primarily seeks parity with one Lakshman Baski who was allotted an

alternative sand block as he was unable to carry on mining operation in the block allotted to him initially.

24. It appears that Lakshman Baski was initially allotted a particular sand block by the respondent authorities vide deed dated 31st August, 2017. But it was detected by the authority that there was certain discrepancy regarding geo stationary parameters which resulted in location of the sand block allotted to him on the bank of the river in place of the river bed area for which the authority granted another concession site in favour of Sri Baski vide indenture dated 14th June, 2018. In the present case, the petitioner was allotted the sand block in question by a deed of lease dated 21st August, 2017 and road challan from July, 2017 to September 2017 and from January 2018 to March 2018 were issued in his favour by the authority on his request, thereby indicating that the petitioner carried on mining operation up to March 2018, if not later. A letter issued by the petitioner to the Additional District Magistrate and District Land and Land Reforms Officer, Birbhum on 16th March, 2018 demostrates that his business was running at a loss at the relevant time due to “ill health and financial hardship”, meaning thereby that the business was continuing till the said date.

25. On an inspection held on behalf of the respondent authorities on 9th January, 2019 and a further inspection held on 29th December, 2020, it was found that the sand block allotted to the petitioner was situated within the radius of 184 metres from a bridge structure, 288 metres from Sainthia railway bridge and there was a primary school within 70 feet of the subject

land. The petitioner was asked to stop mining operation in the sand block forthwith and the lease was prematurely terminated in terms of clause 3(j), 3(m) and 3(n) of the part VII of the lease deed, clause 20 of part VII of the deed and also section 4A (2) of the Mines and Minerals (Development and Regulation) Act, 1957.

26. Section 4A (2) of the Act of 1957 is set out:-

"4A Termination of prospecting licences or mining leases.- (2) Where the State Government is of opinion that it is expedient in the interest of regulation of mines and mineral development, preservation of natural environment, control of floods, prevention of pollution or to avoid danger to public health or communication or to ensure safety of buildings, monuments or other structures or for such other purposes, as the State Government may deem fit, it may, by an order, in respect of any minor mineral, make premature termination of prospecting licence or mining lease with respect to the area or any part thereof covered by such licence or lease."

27. Request of the petitioner for grant of an alternative sand block was turned down by the authority for the reason that in terms of Rule 41 of the West Bengal Minor Minerals Concession Rules, 2016 grant of mining lease can be made only through competitive bidding upon having wide circulation.

28. It is not in dispute that neither the lessor nor the lessee had knowledge in regard to the sand block being within the restricted area at the time of issuance of the notice inviting tender. It may be useful to reproduce clause 1.3 of the said notice.

"This notice inviting Tender is neither an agreement nor an offer by the State Government and/or the District Committee to the prospective Bidders or any other person. The purpose of issuing this notice inviting auction is to provide interested parties with information that may be useful to them in making their bids pursuant to this Bid Document. This Bid Document includes statements which reflect various assumptions and assessments arrived at by the State Government and/or District Committee in relation to the proposed sand blocks. Such assumptions, assessments and statements do not purport to contain all the information that each Bidder may require. The assumptions, assessments, statements and information contained in the Bid Document may not be adequate, accurate and complete in all respect. Each intending Bidder has therefore their own responsibility to conduct their own investigations and analysis for verifying the accuracy, adequacy, correctness, reliability and completeness of the assumptions, assessments, statements and information contained in this Bid Document and obtain independent advice from appropriate sources."

Admittedly such investigation and analysis were not made by the petitioner. Clauses 6.4 and 6.5 of the notice allowing the petitioner to undertake site visit to ascertain the site conditions, location, communication, climate, availability of power and other relevant issues with prior notice to the State Government/District Committee were also not availed of by the petitioner. The notice inviting tender clearly indicates that both the lessor and the lessee are equally responsible for verifying the condition, location and information contained in the bid document. The petitioner not having fulfilled his part of the responsibility, he is debarred from shifting the said responsibility upon the lessor, moreso, as the blocks are described on "as is where is and what is basis". In the premises, it is not correct to hold that the petitioner was not at fault in premature termination of the lease.

29. Though relevant documents with regard to the terms and conditions of the tender notice issued in favour of Lakshman Baski are not available before this Court to ascertain whether they are identical to that of the petitioner, the documents produced before this Court are sufficient to prima facie conclude that the petitioner is not similarly circumstanced with Lakshman Baski and is not entitled to claim the concession granted to the latter by the State Authorities.

30. The respondents have also alleged non compliance of Rule 10 (2) of the West Bengal Minor Minerals (Auction) Rules, 2016 by the petitioner. Rule 10 (2) of the 2016 rules mandates payment of the remaining bid amount (after paying one third of the bid amount) in two equal instalments before execution of the deed of lease.

31. In terms of the notification issued by the Government of West Bengal, Department of Industry, Commerce and Enterprises, Mines Branch, on 23rd May, 2017, the balance amount of the bid money was payable by the petitioner in three instalments with a gap of maximum 45 days each from the first instalment, not exceeding the lease period or the closure of mining operation. Clause 2 of part X of the deed of lease states that the lease shall stand terminated/cancelled in the event of breach of any of the conditions

mentioned in the said notification. Admittedly the aforesaid condition of the notification was not complied with by the petitioner who has sought to explain that the said lapse was due to premature termination of the lease. But the documents on record, particularly the order impugned terminating the lease demonstrates that the lease was terminated much after expiry of the date for depositing the remaining bid amount. Record reveals that one last chance was granted to the petitioner by a letter issued on 8th May, 2018 to deposit the remaining bid amount and the petitioner was directed to appear before the concerned authority for explaining the delay in depositing the amount, supported by documents in original. The said notice was also not responded to by the petitioner. Such non compliance with the notification dated 23rd May, 2017 by the petitioner is the second ground for premature termination of the lease.

32. It is trite law that though lease is not an absolute property and the lessee has no vested right in the leasehold property, termination of lease gives rise to consequences including loss of property and other liabilities for which such action needs to be processed as fairly as possible, in keeping with principles of justice [A.H. Jaffer & Sons and others (supra)].

33. The petitioner has complained that reasonable opportunity of hearing was not granted to him in terms of section 4A (3) of the Act of 1957 prior to premature termination of the lease. Learned counsel for the petitioner has placed reliance on the authorities in Barium Chemicals Limited (supra), Divisional Personnel Officer, Southern Railway and Another (supra) and Oriental Bank of Commerce (supra) wherein the Hon'ble Supreme Court has

held that consideration of a matter includes application of mind, contemplation, examination of documents and a close and careful observation and deliberation. In the case in hand, the order impugned clearly demonstrates that the petitioner was present before the authority along with his learned counsel at the time of hearing and was granted reasonable opportunity of being heard in terms of section 4A (3) of the Act of 1957 in passing the order. The dues of the petitioner and bid amount refundable to him have been elaborately dealt with and calculated in the order and the ground for premature termination of the lease have been vividly made out in no uncertain terms. There is no illegality or irregularity in the decision making process of the authority which calls for intervention of this Court, moreso, as the order does not demonstrate lack of consideration of the matter by the authority.

34. It is pertinent to mention here that the authority in Monnet Ispat and Energy Limited (supra) relied upon by the learned counsel for the respondents deals with grant or refusal of a mining lease pursuant to execution of Memorandum of Understanding between the State Government and the intended lessee. The ratio of the said judgment can be distinguished from the fact situation of the present case.

35. In view of the above, this Court inclined to hold that the writ petition is devoid of any merit and is liable to be dismissed.

36. The petitioner is at liberty to approach the concerned authority for settlement of dues in terms of the order impugned dated 5th February, 2021.

37. Accordingly, the writ petition being W.P.A. 9405 of 2021 is dismissed.

38. There shall however be no order as to costs.

39. Urgent certified website copies of this judgment, if applied for, be supplied to the parties expeditiously on compliance with the usual formalities.

(Suvra Ghosh, J)