

Sl. No.7
13.06.2022

Court No.24
B.M.

In The High Court At Calcutta
Constitutional Writ Jurisdiction
Appellate Side

W.P.A 9802 of 2022

Abdul Bari
Versus
The State of West Bengal & Ors.

Mr. Md. Sarwar Jahan,
Mr. Amit Bikram Mahata,
Mr. Maidul Islam Kayal.

... for the Petitioner.

Mr. Raja Saha,
Mr. S.P. Lahiri.

... for the State.

Mr. Sufi Kamal
Mr. Shireen Hossain

... for the Respondent No.7.

The petitioner challenges the impugned termination letter being office memo No.175/MGP/2022 dated 19th April, 2022 issued by the Pradhan, Mahanandatola Gram Panchayat, regarding cancellation of the lease of Paschim Ratanpur Kosi Ferry Ghat.

The petitioner also challenges the subsequent tender notice bearing memo no.254/MGP/2022 dated 30th May, 2022 issued by the Pradhan of the same Gram Panchayat.

The Pradhan of the Gram Panchayat by a notice dated 6th April, 2022 put up the Paschim Ratanpur Kosi Ferry Ghat for auction. The date of auction was fixed on 13th April, 2022. In response to the aforesaid auction

notice the petitioner participated in the auction process along with three other participants.

The auction went on till the 5th round where the petitioner offered Rs.40,500/- only and was held to be the highest bidder.

The Gram Panchayat accepted the lease rent from the petitioner and issued receipt thereof on 13th April, 2022. The petitioner's lease was for two years for the financial year 2022-2023, 2023-2024 till 13th April, 2024.

Challenging the auction notice dated 6th April, 2022 the existing lease holder filed a writ petition before this court being WPA No.6633 of 2022 (Azizur Rahaman vs. The State of West Bengal & Ors.). The said writ petition was heard and disposed of by the Court on 13th April, 2022.

In the order dated 13th April, 2022, it has been recorded that the petitioner submits that until the ferry ghat is settled by open tender, the petitioner must be allowed to operate.

It was recorded that the lease period of the petitioner ended on 31st March, 2022 and the petitioner therein sought for a direction to cancel and quash the notice dated 6th April, 2022 with regard to handing over of the possession of the ferry ghat to the Pradhan of the Gram Panchayet.

The Court was of the opinion that the rules with regard to settlement of the ferry ghat do not permit continuation after expiry of the lease.

The Court observed that as the Panchayat decided to go for a public auction, the competent authority shall go for a public auction and all eligible bidders including the petitioner shall be entitled to participate.

The prayer for extension of the period of lease as a stopgap arrangement was not accepted by the Court. The authorities were free to take a decision in accordance with law.

As the Court permitted the public auction and did not interfere with the notice dated 6th April, 2022, accordingly, the Panchayat accepted the lease rent from the petitioner.

After the writ petition was disposed of on 13th April, 2022, the Pradhan issued a further notice on 19th April, 2022 whereby it has been mentioned that the lease which was granted in favour of the petitioner on 13th April, 2022 is hereby cancelled in terms of the order dated 13th April, 2022 passed in WPA 6633 of 2022 in the matter of Azizur Rahaman vs. The State of West Bengal & Ors.

In the said notice dated 19th April, 2022 it was clearly mentioned that the auction notice dated 6th April, 2022 specified about pendency of the Court case

and the result of the auction shall abide by the outcome of the case.

Be it mentioned that the auction notice dated 6th April, 2022 mentioned about WPA 3581 of 2022. It has been submitted by the learned advocate appearing for the parties that WPA 3581 of 2022 is sub judice before this Court.

The Pradhan after cancelling the lease entered by and between the petitioner and the Panchayat, issued a fresh auction notice on 30th May, 2022.

The petitioner is aggrieved by the same.

It has been submitted that as the lease agreement has already been entered into by and between the petitioner and the Panchayat on 13th April, 2022 and the lease rent has already been accepted on 13th April, 2022, accordingly, there is no reason to cancel the earlier auction notice dated 6th April, 2022.

Learned advocate representing the Panchayat submits that as the earlier writ petition No.3581 of 2022 is pending, accordingly, it has been mentioned in the auction notice dated 6th April, 2022 that the fate of the auction shall be determined upon the outcome of the writ petition being WPA 3581 of 2022.

It has further been submitted that the subsequent tender notice dated 30th May, 2022 has been issued in compliance of the direction passed by the Court on 13th April, 2022. The Panchayat authority is facing a

contempt proceeding before the Court which passed order on 13th April, 2022 in WPA 6633 of 2022.

It has been submitted that in terms of order passed on 13th April, 2022 earlier lease was cancelled and fresh auction notice was issued on 30th May, 2022.

From the order passed by the Court on 13th April, 2022, it does not appear that the Court quashed and/or interfered with the auction notice dated 6th April, 2022.

Being aware of the fact that the Panchayat took steps for conducting public auction, the Court was of the opinion that the competent authority should proceed with the public auction.

By the notice dated 6th April, 2022 public auction was conducted wherein as many as four participants took part in the said auction. After fifth round of bidding, the petitioner became the highest bidder and accordingly, money was accepted from the petitioner for execution of the lease deed.

There is no reason whatsoever for the Panchayat authority to suo motu cancel lease which was granted in favour of the petitioner on 13th April, 2022 pursuant to the auction notice published on 6th April, 2022. It appears that the Panchayet authority misread and misunderstood the order dated 13th April, 2022 passed by the Court and cancelled the lease executed in favour of the petitioner.

It appears that the earlier auction notice was given enough publication and four participants who were interested to obtain the lease participated in the auction process.

The impugned order of cancellation dated 19th April, 2022 mentions about the Court case which is pending. The Court case which is still pending is WPA 3581 of 2022. Any steps taken in respect of lease of the aforesaid ferry ghat shall abide by the result of the aforesaid writ petition.

Right now, it does not appear that there was any reason for cancellation of lease which was executed in favour of the petitioner on 13th April, 2022.

Possibly, the Panchayat authority after getting knowledge of the present writ petition became aware that the further auction notice dated 30th May, 2022 was issued by mistake and has suo motu taken steps for cancelling the same.

Accordingly, the Pradhan of the Gram Panchayat is directed to immediately take steps pursuant to the lease entered into by and between the petitioner and the Gram Panchayat on 13th April, 2022 in continuation of the notice dated 6th April, 2022.

The writ petition stands disposed of.

Urgent photostat certified copy of this order be supplied to the parties, if applied for, as early as possible.

(Amrita Sinha, J.)