

July 7, 2022
M/L 304
Court No.1
SG

FMA 19 of 2022
with
CAN 1 of 2021

Arindam Singha
vs.
The State of West Bengal and others

Mr. Arup Krishna Das, Advocate
... for the appellant
Mr. Anirban Ray, Id. GP
Mr. Raja Saha,
Mr. Pinaki Dhole, Advocates
... for the State

This appeal is at the instance of the writ petitioner challenging the order of learned Single Judge dated 04.08.2021 passed in WPA 11296 of 2021 whereby the writ petition has been dismissed.

Affidavit of service filed by the appellant indicates that all the respondents have been served.

The appellant had filed the writ petition with the prayer to cancel the renewal of the lease deed in favour of respondent No.6, Smt. Shova Mondal. The plea raised in the petition was that initially the sand mining lease was granted in favour of respondent No.6 on 18.08.2008 for a period of 5 years and again it was renewed for 5 years upto 21.01.2021 and subsequent renewal was also granted. He further stated in the petition that respondent No.6 had executed the sub-lease vide agreement dated 30.09.2019 in favour of one "Multi Construction" wherein the appellant was also a partner.

The grievance of the appellant in the petition was that though the sub-lease had been granted in violation

of lease deed, yet the lease was renewed. In that background, the prayer for cancellation was made.

Learned single Judge by the order under challenge has dismissed the petition on the ground that the appellant had no locus standi to maintain the writ application because the lease for sand mining granted by the State cannot be sub-let, assigned or transferred to any third party.

Having heard learned counsel for the parties and on perusal of the record, it is noticed that the appellant is not claiming any benefit on the basis of the sub-lease executed by the original lessee respondent No.6.

Plea of the appellant before this court is that since the sub-lease has been granted in violation of lease deed as also violation of rules, therefore now the lease is required to be cancelled and it cannot be renewed. Hence, the appellant cannot be ousted on the ground of locus.

Learned counsel for the State referring to the agreement dated 30.09.2019 has raised the plea that it is not sub-lease but we do not find any substance in such an argument because by that agreement, respondent No.6 had transferred the right to sub-lessee 'Multi Construction' to extract the sand and sell it for a consideration which was disclosed. It was also provided that the sub-lessee was required to pay royalty, taxes, IT, GST and other charges to the government as required for extracting sand.

In the aforesaid circumstances, it is clear that the agreement dated 30.09.2019 was in the nature of sub-lease.

Rule 22 of the West Bengal Minor Minerals Rules, 2016 does not permit assignment, mortgage or transfer of lease to any other third party without consent in writing of the State Government or the lease granting authority. That apart, condition No.15.1 of the lease deed dated 04.08.2008 itself contained such a bar. Hence, it is obligatory on the part of the competent authority to examine the issue of violation of the lease condition and the Rule and to take the consequential action. If the competent authority reaches to the conclusion in favour of cancellation of lease, then it will take appropriate steps for grant of fresh lease, if permissible, in accordance with law in a manner which is more beneficial to the State.

Hence, we dispose of the present appeal by setting aside the order of learned single Judge and directing respondent No.2, District Magistrate, Bankura to take appropriate action in accordance with law in terms of the above observations of this court, by complying with the principles of natural justice, as expeditiously as possible, preferably within a period of 2 months from the date of receipt of the copy of this order.

[Prakash Shrivastava, C.J.]

[Rajarshi Bharadwaj, J.]