

March 31, 2022
ARDR
(18)

WPA 17627 of 2021
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CAN 1 of 2022

Amal Singha & ors.
Vs.
The State of West Bengal & Ors.

Mr. Kamalesh Bhattacharya,
Mr. Soumya Kanti Sinha,
...for the petitioners.
Mr. Saptangshu Basu, Sr. Adv.,
Mr. Jagajyoti Das,
Ms. Doyel Dey,
Ms. Susmita Adhikary,
...for the respondent no.1.
Mr. Sanjay Saha,
...for the respondent no.5.
Mr. Chandi Charan De,
Ms. Reshma Rahaman,
...for the State.

Learned counsel for the respondent no.1 submits that he has instructions not to press the application being CAN 1 of 2022.

Accordingly, the application being CAN 1 of 2022 is dismissed as not pressed.

The contention of the petitioners is that despite a deed of partnership existing between the petitioners and the private respondent, a lease for the purpose of settlement of sand quarry was issued in favour of the private respondent by the State respondents though the private respondent was entrusted to participate in the e-auction on behalf of the partnership firm by the petitioners who actually put in funds for the same. The petitioners submit that they made an application before

the State respondents for grant of quarry permit in the name of the partnership firm being “Maa Kali Enterprise”. As the said permit was procured by the private respondent fraudulently, a civil suit praying for a decree of permanent injunction was filed by the petitioners and the learned Court, by an order dated 7th November, 2019 refused the prayer for ad-interim injunction. It is further submitted that the mining has been closed down at present and it is not known at whose instance such closure has taken place. The petitioners pray for issuance of a writ of mandamus against the State respondents for withdrawal of the closure order and grant of the lease in the name of the partnership business in place of the private respondent.

Learned counsel appearing for the private respondent has taken this Court to the permit issued in favour of this respondent on 31st March, 2017. Learned counsel has further referred to the deed of partnership dated 31st August, 2018, i.e., post grant of lease in favour of the private respondent. According to learned counsel, the private respondent participated in the e-auction and was declared the highest bidder therein prior to formation of the alleged partnership and the said partnership deed never came into operation at all.

Referring to paragraph 4 of the writ petition, learned counsel for the State respondents has submitted that it is the admitted position that prior to the partnership agreement, the private respondent

participated in the e-auction for sand mining and was declared as the highest bidder therein.

I have considered the submissions made on behalf of the parties.

It appears from the deed of partnership as well as the permit granted in favour of the private respondent that the permit was granted prior to execution of the deed of partnership, such fact being admitted by the petitioners in paragraph 4 of the writ petition. The claim of the writ petitioners that the private respondent had no fund to participate in the e-auction and was provided with such fund by the petitioners on an understanding that the permit would be issued in favour of the partnership firm, calls for adjudication by the appropriate forum and is beyond the purview of the present writ petition. The dispute in this writ petition is primarily between the petitioners and the private respondent and the State respondents have little role to play herein as the quarry permit was issued much prior to the deed of partnership coming into existence. The private respondent participated in e-auction in his individual capacity and was granted the permit in such capacity. The partnership deed was executed and registered after more than a year of issuance of the quarry permit.

Clause 9.3 of the notice inviting e-auction is relied upon by the petitioners. The said clause demonstrates that the date of commencement of the period for which

the mining lease deed is executed shall be the date on which a duly executed mining lease is registered. It deals with the date of commencement of the period of the lease and has no bearing with the contention of the petitioners herein.

In view of the same, the writ petition is devoid of any merit and is liable to be dismissed.

Accordingly, WPA 17627 of 2021 is dismissed. There shall however, be no order as to costs.

Since no affidavit is invited, the allegations contained in the petition are deemed not to be admitted.

Urgent certified website copy of this order, if applied for, be supplied to the parties upon compliance with all requisite formalities.

(Suvra Ghosh, J.)