IN THE HIGH COURT AT CALCUTTA
Civil Appellate Jurisdiction
(Appellate Side)

M.A.T. 1692 OF 2022
With
I.A. No. CAN 1 of 2022

Md. Humayun Kabir

Vs.

The State of West Bengal & Ors.

Before: The Hon'ble Justice Arijit Banerjee
&
The Hon'ble Justice Apurba Sinha Ray

For the Appellant	:	Mr. Milan Ch. Bhattacharjee, Ld. Sr. Adv. Ms. Sulagna Bhattarcharyya, Adv.
For the State	:	Md. T.M. Siddiqui, Ld. AGP. Mr. Nilotpal Chatterjee, Adv.
	:	Mr. D. Gomes, Adv.
Heard on	:	16.11.2022, 23.11.2022 & 24.11.2022
CAV On	:	24.11.2022
Judgment On	:	20.12.2022

<u>Arijit Banerjee, J. :-</u>

1. By consent of the parties the appeal and the stay application have been taken up together for hearing and disposal.

2. This appeal is directed against a judgment and order dated September 20, 2022, whereby a learned single Judge dismissed the appellant's writ petition being W.P.A. 9405 of 2021.

3. The appellant emerged as the highest bidder in an e-auction conducted for extraction of sand from the river bed of Mayurakshi in District Birbhum. As required by the terms and conditions of the tender documents, he deposited one third of the bid amount.

4. Letter of intent was issued in his favour on April 25, 2017. Upon completion of all formalities, a deed of lease was executed in his favour on August 21, 2017, in respect of a sand block (hereinafter refer to as "the said sand block").

5. After the appellant conducted mining operation for some time, he was verbally asked to stop operation of the sand block. The appellant approached this Court by filing W.P. 5752(W) of 2020 challenging the interruption in operating the mining lease. By an order dated July 8, 2020, a learned Single Judge of this Court disposed of the writ application along with the connected application by directing the District Magistrate, Birbhum to treat the writ petition as a representation and pass a reasoned order as to why the writ petitioner was not allowed to earn the benefits of the sand mining lease

granted to him in the year 2017. The District Magistrate was directed to give an opportunity of hearing to the writ petitioner and/or his legal representative.

Pursuant to the said direction, the District Magistrate Birbhum, heard all the concerned parties including the appellant herein and his advocate and passed an order dated February 5, 2021, terminating the lease in favour of the appellant with effect from the date of the order. In the said order it was further recorded that the appellant owes to the Government a sum of Rs. 5,59,403/- on account of royalty, CCSS, DMF contribution and income tax deduction at source. The appellant was directed to deposit the said amount and the office of the district land and Land Reforms Officer, Birbhum, was directed to ensure that such amount was paid by the lessee and credited to the appropriate heads of account. The District Magistrate further came to a finding that by reason of premature determination of the lease in question, a sum of Rs. 13.79,605/- is refundable to the appellant and accordingly directed that steps for refund of such amount be taken but only after the amount due from the appellant is received by the State Exchequer.

6. The main argument of learned Counsel for the appellant before the learned Single Judge as also before us was that the appellant has been discriminated against. It was stated that one Lakshman Baski who was similarly situated as the appellant and was granted lease of a sand block was accommodated in an alternative sand block when it transpired that there was some difficulty in carrying on mining operation in the earlier block. Learned Senior Counsel drew our attention to the initial lease deed dated August 31, 2017, which was executed in favour of the said Lakshman Baski as also the subsequent lease deed dated June 14, 2018 executed in his favour. It was pointed out that the first lease deed was executed upon the said Baski emerging as the successful bidder in an e-action. However, the second lease deed was executed without fresh bidding.

7. Mr. Bhattacharyya, by referring to Section 4A (3) of the Mines and Minerals (Development and Regulation) Act, 1957, submitted that no opportunity of hearing was afforded to the appellant prior to the authorities terminating his lease prematurely. Section 4A (3) of the said Act is to the effect that "no order making an premature termination of a prospecting licence or mining lease shall be made except after giving the holder of the licence or lease a reasonable opportunity of being heard."

8. Appearing for the state, Mr. Siddiqui, learned Advocate drew our attention to paragraph 8 of the affidavit-in-opposition filed on behalf of the State before the learned Single Judge, which reads, inter alia, as follows:-

> "It is respectfully submitted that the case of Lakshman Baski in respect of sand block no. Bir/Md. Bazar/Nijuri/12/2016, as cited by the petitioner in these paragraphs in the said petition is factually distinguishable from the present case of the petitioner in so far as in the said case of Lakshman Baski, the issue was with regard to certain discrepancy as to geostationary parameters and such discrepancy of geostationary parameters resulted in location of the said sand block *in situ* on the bank of the river. The said issue was enquired with and it was found that the said concession site would *in situ* fall on the bank of the river in place of the river bed area as per the geostationary coordinates mentioned in the relevant NIT, the District Committee, in its meeting dated 03.05.2018, decided to grant another concession site situated at the Plot No. 1/2020 (P) in Mouza Kenduli under PS-Suri being sand block no. Bir/Suri-I/Kenduli/12A in lieu of the said sand block no. Bir/Md.Bazar/Nijuri/12/2016. On the contrary, the

issue in the present case of the petitioner was with regard to falling of the petitioner's said sand block on the restricted zone of bridge structure as well as in close proximity of a nearby primary school and the locality. Therefore, in order to avoid danger to public safety and security as well as in the interest of safeguard of the said railway bridge structure, the mining lease of the petitioner in respect of the said sand block has been prematurely terminated vide the impugned order.

The petitioner contends that he is a similarly situated person on an identical issue as that of the said Lakshman Baski's case and therefore prays for allotment of a compensatory concession site in the adjacent area of Lakshman Baski's new concession site at Plot No. 1/2050(P). Such contention of the petitioner rests on the equitable principle. In this regard, it is respectfully submitted that it is a settled law that the principle of equity stands excluded in respect of the matter/issue which is squarely covered by statutory provisions. It is further well settled that the rule of equity cannot be invoked in derogation of statutory provisions to supplant the law. It is further well settled that no one can claim benefit and/or privilege in a contractual matter beyond what he is statutorily entitled to in such contract."

9. Mr. Siddiqui pointed out that there is no denial of the material facts stated in the aforesaid paragraph of the affidavit, in the affidavit in reply filed by the appellant/writ petitioner before the learned Single Judge.

10. Mr. Siddiqui drew our attention to Section 4A of the Mines and Minerals Development and Regulation Act 1957 (hereunder referred to as "the 1957 Act"), sub-sections 1 and 2 whereof read as follows:-

"(1) Where the Central Government, after consultation with 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 communications or to ensure safety of buildings, monuments or other structures or for conservation of mineral resources or for maintaining safety in the mines or for such other purposes, as the Central Government may deem fit, it may request the State Government to make a premature termination of a prospecting licence or mining lease in respect of any mineral other than a minor mineral in any area or part thereof, and, on receipt of such request, the State Government shall make an order making a premature termination of such prospecting licence or mining lease with respect to the area or any part thereof.

(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 a prospecting licence or mining lease with respect to the area or any part thereof covered by such licence or lease."

11. Learned Counsel also drew our attention to Rule 37 of the West Bengal Minerals Concession Rules, 2016 (in short the '2016 Rules') and in particular to Rule 37 thereof which reads as follows:-

"**37. Right to determine lease.-**(1) The mining lease holder may determine the lease at any time by giving not less than six months' prior notice in writing to the State Government or to any officer appointed in this behalf by the State Government and after paying all outstanding dues of the State Government, every such application for determining a part or the whole of a lease shall be accompanied by a fee of Rs. 5000/- (rupees five thousand) only deposited in the appropriate head of account for meeting the expenditure for survey and demarcation of the area to be determined or surrendered.

(2) When the State Government is of the opinion that it is expedient in the interest of regulation of mines and mineral development so to do, it may, by an order, make premature termination of a mining lease in respect of any mineral."

12. Mr. Siddiqui further drew our attention to Clause 3(j) of Part-VII of the lease deed executed in favour of the appellant, which provides that:- "During the period of lease, the Govt./Deptt. shall have the authority to stop mining in case of possible danger due to mining." Learned Counsel also referred to Clause 3(m) of Part (VII) of the said lease deed which provides;-

"(m). No mining operation in case of *in situ* Hard Rocks and minerals at any point within a distance of 50 mts. From any

> hydraulic structure, bridge reservoir, canal, road, other public works or buildings shall be allowed except with the previous permission in writing of State Government in Irrigation and Waterways Deptt. And/or Public Works (Roads) Deptt."

13. Clause 20 of Part VII of the said lease deed was also referred to. Clause 20 reads as follows :-

> "20. Notwithstanding anything contained in this lease, the lessee/lessees on receipt of a notice in writing from the Collector/Deputy Commissioner or an officer appointed by the State Government/District Authority for the purpose, stating that it or he considers the lessee's/lessess' operations on the land delineated in the plan to involve danger of a serious land slip, or to involve any danger or danger to the stability of any bridge or hydraulic structure either existing or under construction, at any time, now or in future in the neighbourhood by reason of extraction of mineral by the lessee and requiring him to desist from such operation forthwith shall desist from such operations. The lessee/lessees shall not claim any compensation for stoppage of work in respect of the delineated area."

14. Learned Counsel then referred to the Notice Inviting Tender dated October 27, 2016 wherein, in Clauses 1.3, 1.4 and 1.5 under the heading "**IMPORTANT INFORMATION**", it is stated as follows:-

> "1.3. 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.

1.4. Information provided in this Bid Document has been collated from several sources some of which may depend upon interpretation of Applicable Law. The information given is not intended to be an exhaustive account of statutory requirements and should not be regarded as exhaustive and complete in all respect. The State Government and/or District Committee accepts no responsibility for the accuracy or otherwise for any statement/data contained in this Bid Document.

1.5. The State Government or the District Committee or its employees and advisors make no representation or warranty and shall have no liability to any person, including any Bidder under any law, statute, rules or regulations or tort, principles of restitution or unjust enrichment or otherwise for any loss, damages, cost or expense which may arise from or be incurred or suffered on account of anything contained in this Bid Document or otherwise, including the accuracy, adequacy, correctness, completeness or reliability of the Bid Document and any assessment, assumption, statement or information contained therein or deemed to form part of this Bid Document or arising in any way from participation in this Bid process."

15. Mr. Siddiqui submitted that the order of termination of the lease granted to the appellant was necessary in public interest. The order is a well reasoned order. The order needs no interference. The learned Single Judge rightly dismissed the writ application.

16. The learned Single Judge discussed the facts of the case extensively and came to the following findings:-

"(i) 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 geostationary 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 demonstrates 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.

(ii) 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.

(iii) 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)].

(iv) 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, more so, as the order does not demonstrate lack of consideration of the matter by the authority."

17. We have heard learned Counsel for the parties at length. Essentially, the same arguments that were made by learned Counsel for the parties before the learned Single Judge, as recorded above, were also advanced before us.

18. We are of the considered view that there is no infirmity or illegality in the order of the concerned District Magistrate which was assailed before the learned Single Judge who rightly dismiss the writ petition.

19. Firstly, under the terms of the Notice Inviting Tender, it was the duty of the appellant to personally inspect the sand block which was the subject matter of the tender process. Evidently the appellant did not undertake any such exercise. The appellant tried to shift the entire blame to the State Government by saying that the State Government represented that it had inspected the subject sand block. However, the terms of the Notice Inviting Tender clearly state that "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.” (Clause 1.3). Similar statements are there in clauses 1.4 and 1.5 which have all been extracted above.

20. Secondly, Section 4A of the Mines and Minerals Development and Regulation Act, 1957 as well as Rule 37 of the West Bengal Minerals Concession Rules, 2016 empower and authorise the State Government to prematurely terminate a mining lease in greater public interest, e.g., to ensure safety of buildings, monuments or other structures (which would include railway bridges). Additionally, Clauses 3(m) and 20 of Part (VII) of the concerned lease deed also authorise the State Government/District Authority to stop mining activities within 50 meters from any hydraulic structure or bridge and/or when such activity puts at risk the stability of any bridge. Admittedly, in the present case, the sand block that had been allotted to the appellant was within the prohibited distance of 2 railway bridges. Mining activity in the concerned sand block would have adversely

affected the structural stability of such railway bridges. Also, there was a primary school within the prohibited distance. Thus, the said administration had the power to prematurely terminate the concerned lease on certain grounds and such grounds existed in the present case. It is not that the District Magistrate arbitrarily and without assigning any reason issued an order of premature termination of the concerned lease.

21. The point of discrimination urged by the appellant also does not impress us. The appellant and Lakshman Baski cannot be said to have been similarly placed. In the case of Baski, due to certain discrepancy in geostationary parameters, erroneously a sand block was allotted to him which was on the bank of the river. Mining or sand extraction is permitted in the river bed and not on river bank. Accordingly, the District Committee in its meeting dated May 3, 2018, decided to grant another concession site to Baski. Baski could not have detected the discrepancy in the geostationary parameters or coordinates and it was not his fault that the first site allotted to him turned out to be on the river bank instead of river bed.

22. However, in the case of the appellant, there may have been some lapses on the part of the State administration in allotting a sand block to the appellant which was in the restricted zone having railway bridges and a

primary school in close proximity thereby making it a restricted zone, yet, it was also the obligation of the appellant to satisfy himself by independent investigation and local inspection that the sand block that was proposed to be leased out to him was not within a restricted zone and there would be no impediment to carrying out mining activities in such sand block. The appellant fail to discharge this duty. Hence, his mining lease had to be determined prematurely.

23. The appellant raised a further grievance that the second lease executed in favour of Baski was not pursuant to any bidding process. The appellant should be given the same treatment. We are unable to agree with the appellant. As noted above, Baski stood on a different footing. Hence, the appellant cannot claim the same treatment as a matter of right. Even assuming that execution of the second lease in favour of Baski without holding e-auction in terms of the 2016 Rules, was illegal, the appellant cannot claim negative equality. Just because one citizen has received undue and/or unlawful favour from the state, another citizen cannot insist on receiving the same advantage. Article 14 of our Constitution does not envisage negative equality.

24. The learned Judge has also found that the appellant was a defaulter in payment of the balance lease rent. The appellant contended that he was unable to liquidate the balance outstanding amount because of premature determination of the lease. The learned Judge has found, and correctly so, the appellant became a defaulter and the last date for payment of the balance lease rent expired prior to issuance of the order of the District Magistrate determining the lease prematurely. In our view, a defaulter does not deserve any relief from a Court of equity.

25. A Division Bench hearing an Intra-Court appeal would not interfere unless the judgment and order impugned before it is completely arbitrary or "Wednesbury unreasonable" or perverse in the sense that it is based on no material. If the view of the learned Single Judge is a plausible one, supported by reasons, just because the Division Bench may have a different view, is not ground enough for interfering with the order. In the present case, far from being arbitrary or so un-reasonable that no reasonable person could have come to such a conclusion or perverse, the judgment and order assailed before us is a well reasoned, cogent and comprehensive order which calls for no interference. The learned Judge was justified in dismissing the writ petition and upholding the order of the concerned District Magistrate

prematurely terminating the mining lease that was executed in favour of the appellant.

26. Learned Single Judge has rightly observed that there is no infirmity in the decision making process. The impugned order of the District Magistrate was issued after duly observing the rules of natural justice. It is trite that the High Court while examining an executive order in exercise of jurisdiction under Article 226 of the Constitution is concerned with the decision making process and not with the merits of the decision. The High Court does not act as an appellate Court while judicially reviewing an administrative order. The order of the District Magistrate assailed before the learned Single Judge is a well reasoned order and cannot be said to be perverse in any sense. The learned Single Judge rightly refused to interfere with the said order.

27. The appeal and the connected application accordingly fail and are dismissed without any order as to costs.

28. Urgent certified website copies of this judgment, if applied for, be supplied to the parties subject to compliance with all the requisite formalities.

I agree.

(Apurba Sinha Ray, J.) **(Arijit Banerjee, J.)**