

IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
APPELLATE SIDE

The Hon'ble **JUSTICE BIBEK CHAUDHURI**

WPA 710 of 2007

Nimat Sk.

Vs.

The State of West Bengal & Ors.

For the Petitioner:	Mr. Anjan Bhattacharya, Adv., Mr. Gora Chand Samanta, Adv.
For the Respondent No.9:	Mr. Anirban Dutta, Adv.
For the State Respondent:	Mr. Suman Sengupta. Adv., Mr. Santan Panja, Adv.

Heard on: 26 July, 2023.

Judgment on: 17 August, 2023.

BIBEK CHAUDHURI, J. : –

1. On May 2004, the petitioner filed an application under Rule 5(2) of the West Bengal Minor Mineral Rule, 2002 for grant of long term mining lease of sand in respect of plot No.1560(P) measuring an area of about 6 acres at Mouza- Palitpur, JL No.132 under Police Station- Nanur in the District of Birbhum for a period of 5 years before the Mining Officer-in-Charge, Suri along with all necessary documents and requisite fees. The petitioner also made an application for acquiring permission for extraction of sand in respect of the plot in question considering availability of sand in the applied area on the river bed of Ajoy. It is provided in Rule 9(1) of the West Bengal Minor Minerals Rule, 2002 that in spite of in respect of the same area more than one applicant has filed application, preference

shall ordinary to be given to the application received first, unless the State Government or the officer authorized by it for special reason to be recorded in writing, deciding to grant mining lease to an applicant whose application is received subsequent to the first one. The petitioner is prior applicant in respect of the applied area as such he is entitled to get mining lease for sand in respect of the subject plot in question. It is further stated by the officer-in-charge of Suri zone submitting feasibility report in respect of the said plot. It is stated in the report that a long term mining lease was issued in the name of one Bharat Chandra Das on 23rd August 1999 covering entire applied area and the said lease expired on 22nd August, 2004. The said Bharat Chandra Das did not apply for renewal of mining lease therefore the mining officer-in-charge recommended grant of mining lease in favour of the petitioner. The petitioner was also granted mining lease in respect of plot No.1481, 1558, 1560(P) and 1212 measuring 26 acres of land at Mouza- Palitpur under Police Station Nanur in the district of Birbhum. Since the concerned state authority failed to discharge their duty in respect of grant of mining lease in favour of the petitioner, he preferred a writ petition being WP No.2405(W) of 2004 before this Court. The said writ petition was disposed of by Co-ordinate Bench vide order dated 9th November, 2004, directing the concerned authority to consider and dispose of the application of the petitioner as early as possible, positively within a period of three months from the date of communication of the order. The said order was due communicated to the Secretary, Commerce and Industries Department on 26th April, 2005. It is the case of the petitioner that he came to know from

the office of the Commerce and Industries Department on 29th April, 2005 that the previous lessee, namely Bharat Chandra Das filed an application on 18th October, 2004 under Rule 5(2) of the West Bengal Minor Minerals Rules, 2002 for grant of mining lease of sand in respect of the same plot. During the pendency of his application for considering, the said Bharat Chandra Das moved an application under Article 226 of the Constitution of India being WP No.21633(W) of 2004 before this Court and a Co-ordinate Bench vide order dated 13th January, 2005 disposed of the said writ petition directing the respondent authority to consider petitioner's application for renewal in accordance with the law and disposed of the said application after giving reasonable opportunity of hearing to the said Bharat Chandra Das and passed a reasoned order in respect of renewal of lease in his favour. The petitioner did not receive any notice of the said writ petition. Therefore any order passed in writ petition is not binding on the petitioner. It is alleged by him that the authorities concerned in collusion and connivance with Bharat Chandra Das most illegally, wrongfully treated the application under Rule 5(2) of the West Bengal Minor Minerals Rules, 2002 as an application under Rule 12(1) and granted renewal of mining lease. It is alleged by the petitioner that the subsequent act and the conduct of the authority is arbitrary, discriminatory and unlawful. The petitioner submitted letter demanding justice before the authority on 16th May, 2005. The said Bharat Chandra Das was directed to appear personally before the Deputy Secretary on 21st June, 2005 for a hearing in connection with the renewal of application for mining lease of sand in respect of plot 1560(P) of Mouza- Palitpur within

Police Station Nanur. The Assistant Secretary to the Government of West Bengal by a letter 13th July, 2005 informed the petitioner that mining lease shall be granted in favour of him for a period of 5 years as per the petitioner's application dated 24th April, 2004. Finally the private respondent No.9 was granted long term mining lease sometime in January, 2007. Therefore the petitioner has filed the instant writ petition praying for issuance of Writ in the nature of Mandamus commanding the respondent and their agent servants not to grant long term mining lease in favour of private respondent No.9 in connection with plot No.1560(P) measuring 6 acres of land of Mouza- Palitpur under Police Station- Nanur and also directing the respondent to grant license in favour of the petitioners.

2. I have heard the learned Advocate for the petitioner as well as the learned Advocate for the State respondent. It is needless to say that respondent No.6 as granted mining lease for 5 years on the basis of his application dated 18th October, 2004. Such lease was granted sometime in 2007 this effect the availability from the writ petition itself petitioner prayer was rejected. However the instant writ petition is pending from 2007. The grievance of the petitioner is that the petitioner made an application for grant of lease in respect of plot No.1560(P) on 24th May, 2004 where as proforma respondent applied for lease of the same area on 18th October, 2004. As per 2002 Rule, mining lease could be granted only to the applicant who preferred the application first, the authority may consider the subsequent applicant for grant of mining lease. However in

such case the state government is required to offer special reason for acceptance of subsequent applicant.

3. Be that it may, I am in agreement with the learned Advocate for the State respondent that as a result of efflux of time the instant writ becomes infructuous case even assuming that the lease was granted to the private respondent by the State respondent arbitrarily and illegally, the lease period has ended on efflux of time in view of the West Bengal Minor Minerals Rules, 2016, the procedure in granting mining lease has changed altogether. At present mining can be granted only on auction conducted by the District Magistrate of a District. For the purpose of participation of auction in mining lease, an applicant shall meet the requirement as specific in Rule 4(1) of the West Bengal Minor Minerals Concession Rule, 2016 and the terms and conditions prescribed in the mining lease deed as per format as provided in that Rule. Such auction shall be conducted by electronic mode and the bid parameter and process are delineated in Rule 8 and 9 of the said Rule.

4. Therefore the provision of grant of mining lease has altogether changed during pendency of the instant writ petition. Under such circumstances this Court is not in a position to grant any relief to the petitioner.

5. For the reason stated above the instant writ petition is dismissed on contest however without any costs.

(Bibek Chaudhuri, J.)