

WPA 3087 of 2023

Shyam Sundar Mondal
Vs.
The State of W.B. & Ors.

Mir Anowar ...for the petitioner.

Mr. Sanjay Saha ...for WBMDTCL.

Affidavit of service filed by the petitioner is taken on record.

None appears for the State respondents despite service.

Mr. Chandi Charan De, who usually appears for the State and is present in Court, is requested to represent the State in the matter. His appointment be regularized by the office of the learned Legal Remembrancer.

The petitioners should serve copy of the writ petition alongwith all annexures thereto to Mr. De in course of this day.

Heard learned counsels for the parties.

Being the highest bidder in the e-auction floated by the respondents, the petitioner was granted long-term mining lease for a period of five years vide deed of lease registered on 5th March, 2018 which was valid till 4th March, 2023. The petitioner was unable to carry on mining operation for almost two years on the ground of covid-19 pandemic as well as the fact that the only approach road to

the block in question was not made available to the petitioner during the said period.

In an earlier writ petition filed by the petitioner being WPA 7638 of 2021 this Court, by an order passed on 25th April, 2022, recorded that the petitioner was granted lease for mining sand in the district of Purba Bardhaman and the only approach road for transportation of sand to and from the plot in question was through Hooghly district.

A joint inspection held by the authorities revealed that there was no alternative transit except the path used by the petitioner and a request was made to the Additional District Magistrate and District Land and Land Reforms Officer, Hooghly to look into the matter so that the petitioner could carry on his mining operation through Hooghly district. The concerned authority was directed by this Court to consider the representation submitted by the petitioner in this regard.

Pursuant to the said order, the representation of the petitioner was taken up for consideration by the Additional Secretary to the Government of West Bengal. By an order passed on 30th May, 2022 the concerned authority turned down the prayer of the petitioner for deviation of the approach road.

In the present writ petition, the petitioner has prayed for extension of the period of lease since he was not able to carry on mining operation for considerable period of time for reasons stated hereinabove.

Learned counsel for the petitioner has taken this Court to clause 5 of part IX of the deed of lease which demonstrates that if through force majeure the fulfilment by the lessee of any of the terms and conditions of the lease be delayed, the period of such delay shall be added to the period fixed by this lease.

The petitioner has also sought benefit under Section 105 of the Transfer of Property Act since he was unable to continue with mining operation due to no fault on his part.

The petitioner submitted a representation in this regard before the concerned authority on December 12, 2022, which is yet to be considered. The petitioner prays for a direction upon the concerned authority to consider the representation at the earliest.

It is submitted on behalf of the respondents that the 3rd respondent be directed to consider the representation submitted by the petitioner in presence of the 5th respondent, being the Additional District Magistrate and District Land and Land Reforms Officer, Purba Bardhaman.

In view of the above, the writ petition is disposed of directing the 3rd respondent to consider and dispose of the representation submitted by the petitioner dated 12th December, 2022 within a period of one month from the date of communication of this order upon granting reasonable opportunity of hearing to all the interested

persons including the petitioner and in presence of the 5th respondent, in accordance with law.

The decision taken by the authority shall be communicated to the petitioner within a week thereof.

With the above observations and directions this writ petition being WPA 3087 of 2023 is disposed of.

However, there shall 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.)