

WPA 3727 of 2022

Prabhas Ghosh
Vs.
The State of W. B. & Ors.

Mr. Rahul Karmakar
Mr. Kalyan Sengupta
Mr. S. Guchhait ...for the petitioner.

Mr. Sanjay Saha ...for the respondent No.7.

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

None appears for the State respondents. No report in the form of affidavit as called for has also been filed.

Heard learned counsels for the petitioner and the 7th respondent.

It is submitted on behalf of the petitioner that the petitioner was granted long-term mining lease by the respondent authorities vide deed of lease registered on 18th November, 2016 for a period of five years which expired on 17th November, 2021.

Possession of the leasehold plot was delivered in favour of the petitioner pursuant to an order passed by a co-ordinate Bench of this Court on 12th January, 2021 in WPA 9096 of 2019. The petitioner was able to carry on mining operation barely for a period of six months since the lease expired on 17th November, 2021.

The prayer of the petitioner is two-fold:- period of lease be extended for a term of five years from the date of possession of the leasehold interest and alternatively for refund of the proportionate lease rent to the petitioner for the term unutilized.

Learned counsel draws the attention of the Court to clause 5 of part IX of the deed of lease which indicates that if through force majeure the fulfillment by the lessee of any terms and conditions of the lease be delayed, the period of such delay shall be added to the period fixed by the lease.

In the said clause, the expression “force majeure” includes other happenings which the lessee could not reasonably prevent or control.

It is submitted on behalf of the 7th respondent that it is for the State respondents to take a call since the deed of lease was executed by and between the State and the petitioner.

In the order impugned passed by the District Land and Land Reforms Officer, Bankura on 1st February, 2022 which is assailed in the writ petition, it is held that there is no provision for renewal or extension of the existing mining lease.

Such observation is de hors clause 5 of part IX of the deed of lease. Since the petitioner was unable to carry on mining operation throughout the entire lease period save and except for a period of six months due to

no fault on the part of the petitioner, it is expected that the concerned authority shall consider the request of the petitioner for extension of the period during which the petitioner was unable to carry on mining operation.

The order impugned does not deal with the submission made on behalf of the petitioner in support of his contention and requires to be revisited by the authority.

In view of the above, the order impugned passed on 1st February, 2022 is set aside.

The concerned authority, being the 4th respondent herein, is directed to revisit the request of the petitioner and pass a reasoned and speaking order upon taking into consideration clause 5 of part IX of the deed of lease as well as earlier orders passed by this Court and also upon affording reasonable opportunity of hearing to all the interested parties including the petitioner, in accordance with law within one month from the date of communication of this order.

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

Copy of this order be communicated to the 4th respondent by the petitioner at the earliest.

With the above directions the writ petition being WPA 3727 of 2022 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.)