

06.02.2023

CRR 919 of 2011

In the matter of : Nirmal Karmakar

... Petitioner

Ms. Suchismita Dutta

... amicus curiae

Mr. Bidyut Kr. Roy

Ms. Sima Biswas

... for the State

Since none appears on behalf of the petitioner, Ms. Suchismita Dutta, learned Counsel being appointed as an *amicus curiae* has extended her cooperation by helping the Court in disposing of the criminal revision.

This application under Section 482 of the Code of Criminal Procedure challenges the proceeding being G.R. Case No.680 of 2010 pending before the learned Chief Judicial Magistrate, Hooghly.

Brief fact of the case is that, the concerned B.L. & L.R.O. informed the Officer-in-Charge of Panduah in writing that the petitioner before this Court, Nirmal Karmakar of village Arabindapally, Boinchi, Panduah, unauthorisedly extracted and removed 208644 cft. of ordinary sand/ordinary clay/morrum/brick earth/marble for commercial use in contravention of Mines and Minerals (Regulation and Development) Act, 1957, changed the character/classification of land without permission of the Collector. The information since disclosed offence cognizable in

nature, Punduah Police Station Case No.136 of 2010 dated 9.6.2010 was registered. The police took up investigation, which culminated in the submission of charge-sheet against the accused persons under Section 4(d) of the West Bengal Land Reforms Act, Section 21(2) of the Mines and Minerals (Regulation and Development) Act, 1957 read with Section 290/379/447 of I.P.C. against the accused persons.

Ms. Dutta draws my attention to the provisions of Section 22 of the Mines and Minerals (Regulation and Development) Act, 1957 and submits that the charge-sheet has been filed in contravention to the provisions as laid down under the Act, and as such learned Chief Judicial Magistrate had no authority to take cognizance of the offence punishable under the Mines and Minerals (Regulation and Development) Act, 1857.

It is further contended that Mines and Minerals Development Act as well as West Bengal Land Reforms Act are special Acts. Therefore, general law as laid down under the penal code cannot be pressed into service. Special Act shall always prevail over general Act.

It is further contended that petitioner obtained permission to establish a brickfield over the plot of land he purchased from the local Government and the Panchayat Pradhan being the head of the Gram Panchayat accorded permission. There is every reason to presume that the permission was given as required under the West Bengal Land Reforms Act as well.

True, it is according to Section 22 of the Mines and Minerals (Regulation and Development) Act, 1957 no Court shall take cognizance of any offence except upon complaint in writing made by a person authorised in this behalf by the Central or State Government. The notification issued in this regard by the State Government fails to stand the scrutiny of its constitutionality before the court of law and in support of her contention Ms. Dutta relied upon the judgement of the coordinate Bench of this Court in the case of *Bengal Brickfield Owners' Association and ors. Vs. The State of West Bengal & ors.*, reported in *Calcutta High Court Notes 2006 Volume-III page 28*. It is trite to say that provisions of special law shall prevail over the general law. Therefore, in this case Sections 290/379/447 of I.P.C. cannot be made applicable as against this petitioner. However, submission of charge-sheet carries with its presumption that provisions of Section 4(d) of the Land Reforms Act has been violated which exposes the petitioner to a criminal trial. There was infraction of provisions of law as laid down under West Bengal Land Reforms Act. Whether the Panchayat Pradhan is the competent authority to accord permission or not is a matter to be adjudicated in course of trial. *Prima facie*, there is reason to proceed against the petitioner under Section 4(d) of the West Bengal Land Reforms Act.

The petition is, thus, allowed in part.

Learned Chief Judicial Magistrate, Hooghly, is directed to proceed with the case only under Section 4(d) of the West Bengal Land Reforms Act against the petitioner along with allied Rules, if

any. The petitioner would be at liberty to take all points taken by Ms. Dutta before this Court, in course of trial.

With this aforesaid observation, C.R.R. 919 of 2011 is disposed of.

Before parting with the matter I express my sincere thanks to Ms. Dutta for her help in disposing of the criminal revision, as a friend of the court.

Urgent photostat certified copy of this order, if applied for, be given to the parties on usual undertaking.

(Siddhartha Roy Chowdhury, J.)