

01. 18.05.2023
Court No.6
Tanmoy Ghosh

MAT 861 of 2023

**Sambhu Banerjee & Anr.
-Versus-
The State of West Bengal & Ors.**

**With
IA No: CAN/1/2023
With
IA No: CAN/2/2023**

Mr. Nilanjan Bhattacharjee Adv.,
Mr. Abhilash Chatterjee, Adv.,
Mr. Saikat Dey, Adv.
...for the appellants/applicants.

Mr. Chandi Charan De, Ld. AGP,
Mr. Anirban Sarkar, Adv.
...for the State.

Mr. Bikash Ranjan Bhattacharyya, Ld. Sr. Adv.,
Ms. Santi Das, Adv.
...for the respondent no.4/
writ petitioner.

Affidavit of service filed in Court today, be kept with
the records.

In Re: IA No: CAN/1/2023

This is an application for leave to prefer appeal
against a judgment and order dated May 2, 2023, whereby
the writ petition of the respondent no.4 herein being WPA
10274 of 2023, was disposed of with the following
observations:-

*“In view of the above and in the interest of justice, I direct
the respondent no. 4 to consider the petitioner’s representation for
extension of the lease period for sand mining within a fortnight
from the communication of this order and to intimate such order to
the petitioner within a week therefrom.*

However, till the issue is decided by the respondent authorities, they shall not create any third party interest in respect of the particular sand block.”

Learned Advocate for the intending appellants/ applicants says that the applicants had also participated in the tender process pursuant where to mining lease was executed in favour of the respondent no.4 herein who became the successful tenderer. The lease was for five years starting from April 27, 2018 and expired on May 8, 2023. The applicants legitimately expected that once the lease in favour of the respondent no.4 has come to an end, fresh tender will be floated in which the applicants can participate. Hence, the applicants are affected by the order of the learned Single Judge. Hence, this application for leave to appeal.

We are of the view that the applicants may have something to say. Leave is granted to prefer appeal against the order dated May 2, 2023.

Accordingly this application being IA No: CAN/1/2023 is allowed and disposed of.

In Re: MAT 861 of 2023
With
IA No: CAN/2/2023

By consent of the parties, the appeal and the connected application are taken up together for hearing.

The only prayer that the appellants make is that they also be heard by the District Magistrate while

considering the representation of the respondent no.4/writ petitioner for extension of the lease.

Mr. Bikash Ranjan Bhattacharyya, learned Senior Advocate representing the writ petitioner, says that the issue of extension of lease is only between the Government and the writ petitioner. No third party has the right to participate in a proceeding held by the District Magistrate to consider the writ petitioner's request for extension of the lease. He, however, fairly admits that if any member of the public is aggrieved by the order that the District Magistrate may pass, he may challenge the same, in accordance with law, before the appropriate forum.

We are inclined to agree with Mr. Bikash Ranjan Bhattacharyya, learned Senior Advocate. Indeed, whether or not the lease in favour of the writ petitioner will be extended is for the concerned District Magistrate to decide. If the District Magistrate decides in favour of the writ petitioner on extraneous grounds or for reasons not tenable in law, the decision will be open to challenge by anybody who may be aggrieved by the decision.

Accordingly we direct that once the District Magistrate takes a decision on the writ petitioner's representation, such decision will be made public by issuing appropriate public notice. Although, the writ petitioner may reap the benefit of a favourable decision that may be taken in his favour with immediate effect,

no formal extension of the lease will be granted in his favour for a period of four (4) weeks from the date of the decision.

Since we have not called for affidavits, the allegations in the stay petition shall be deemed not to have been admitted by the respondents.

The appeal being MAT 861 of 2023 and the connected application being IA No: CAN/2/2023 are disposed of.

Let urgent photostat certified copy of this order, if applied for, be made available to the parties upon compliance with all requisite formalities.

(Arijit Banerjee, J.)

(Apurba Sinha Ray, J.)