

Form J(2)

**IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
Appellate Side**

**Present :
The Hon'ble Justice Bibek Chaudhuri**

WPA 12620 of 2023

**Sankar Das
-Vs.-
State of West Bengal & Ors.**

**For the petitioner : Mr. Sukanta Chakraborty
Ms. Suparna Das
Mr. Soumya Kanti Sinha**

For the respondent No. 4 : Mr. Sanjay Saha

**For the State : Mr. Chandi Charan De
Mr. Anirban Sarkar**

Heard & Judgment on : 03.08.2023

Bibek Chaudhuri, J.

This is a third round of litigation at the instance of the petitioner over a mining lease.

Since the petitioner has travelled this Court for the third time, it is necessary to state the factual background which prompted the petitioner to approach this Court time and again. The petitioner was a successful L-1 bidder in respect of e-auction for sand mining blocks and he was offered mining lease in respect of five hectares equivalent

to 12.35 acres of land in Mouza, J.L. No. 57, Plot No. 53 (part), 781 (part) within P.S. Datan. After declaration of successful bidder in favour of the petitioner letter of intent was also issued. However, before execution of lease deed a dispute cropped up over geo coordination as to whether the allotted block in favour of the petitioner falls within the territory of West Bengal or Orissa. The petitioner filed W.P. 14481(W) of 2018 before this Court annexing the latitude and longitude map to prove that the said block was within the territory of West Bengal. The Co-ordinate Bench on its wisdom disposed of the said writ petition with the following direction:-

“Accordingly, this Court directs the State of West Bengal through its appropriate authorities to cause a joint inspection of the site in question along with the representative of the petitioner and the report shall be filed by the respondent no.4 in the form of an affidavit stating the outcome of the said joint inspection and the report submitted by the Inspecting Authorities.

It is open to the State of West Bengal to inform the competent authority of the State of Odisha to be a part of such joint inspection so that the land or site in question whether falls within the State of West Bengal or Odisha can be resolved.

The respondent no.3 is restrained from taking any further action for fresh auction in respect of plot in question for a period of eight weeks from date or until further order/orders of this Court, whichever is earlier.”

Though the aforesaid order was passed on 23rd August, 2018, no joint inspection was held till September, 2022.

This prompted the petitioner to file an application in the aforesaid writ petition being CAN/1/2019. The said application was

disposed of by another Coordinate Bench on 5th September, 2022 along with the writ petition. It was ordered:-

“In view of the above, the writ petition is disposed of directing the 4th respondent to consider and dispose of the representation submitted by the petitioner dated 11th May, 2022 within one month from the date of communication of this order after affording reasonable opportunity of hearing to all the interested parties including the petitioner in accordance with law.”

I am constrained to say that it is not the disposal of representation, but inspection and survey of the geographical location of the concerned block over which LOI was granted in favour of the petitioner. The petitioner did not get any communication as to whether the inspection was actually held by the respondent authorities and it was decided as to whether the land/block which was allotted to the petitioner for mining falls within the territory of West Bengal or Orissa.

Surprising enough the State respondents, on the other hand, obtained an affidavit from the petitioner that he would not withdraw money deposited by him for grant of licence.

Thus, learned Advocate for the petitioner rightly contends that the petitioner has been suffering from both ways. First, he was not allotted with the block over which he was the successful bidder for quarry of sands. Secondly, no lease deed was executed in favour of him and thirdly, the Government has withheld his entire deposit since 2018.

By filing a supplementary affidavit it is contended on behalf of the petitioner that in the meantime by virtue of the power conferred in the West Bengal Sand (Mining, Transportation, storage and Sale)

Rules, 2021 the WBMDTCL, respondent no. 4 herein issued e-auction notice in respect of grant of mining permit of different areas of the State of West Bengal including the mining blocks of Dantan block. It is contended by the learned Advocate for the petitioner that if the block which was allotted to the petitioner being 'L1' bidder is again allotted to another person he will not only suffer irreparable loss and injury but such act will be an arbitrary and illegal exercise on the part of the respondent nos. 2,3 and 4 because the petitioner's fundamental right of trade and business under Section 19(g) of the Constitution of India shall be violated. This will also affect the petitioner's life of sustenance enshrined in Article 21 of the Constitution.

It is also contended on behalf of the petitioner that Rule 34 of the West Bengal Sand (Mining, Transportation, Storage and Sale) Rules, 2021 saves the pending applications and it is laid down :-

"An application for grant of sand mining lease received prior to the commencement of these Rules wherein the sand mining lease deed has not been duly registered, shall be registered only after permission from the State Government".

Thus, the sand mining lease of the petitioner could have been registered even under the Rules of 2021 under the provision of Rule 34 of 2021 Rules.

Learned Advocate for the WBMDTCL, respondent no. 4 submits that by virtue of the power conferred to the respondent no. 4 – State Corporation the respondent no. 4 has the exclusive right to select mine developer and operator of sand blocks in the State of West Bengal. Accordingly a report was called for from the Additional District Magistrate-cum-DL&LRO and the Mining Officer of the District to state the open blocks where mining developer and operator can be

engaged under 2021 Rules. After getting such report the respondent no. 4 floated the tender.

Secondly, it is submitted by the learned Advocate for the respondent no. 4 that the West Bengal Minor Minerals Rules, 2016 provides the provision of appeal against the order of ADM and DL&LRO and the Appellate Authority being the Divisional Commissioner of the particular zone without taking resort to the appellate provision, the petitioner has filed the instant writ petition which cannot be entertained in view of alternative efficacious relief contained in the said Rules.

The learned Advocate for the State respondents has adopted the submission made by the learned Advocate for the WBMDTCL, respondent no. 4. Having heard the learned Advocates for the parties and on perusal of the entire materials-on-record this Court is of the view at the outset that it is no longer *res integra* that when an administrative order is passed without jurisdiction or without following the basic tenets of law, the petitioner can avail the remedy of writ jurisdiction though there may be alternative relief contained in the Rules.

It is learnt from the submission made by the learned Advocate for the respondent no. 4 that the lease could not be granted in favour of the petitioner because of the fact that he failed to obtain environment clearance and also failed to produce the mining mapping before the authority.

Prior to that the respondent authority ought to have disposed of the territorial dispute by ascertaining the fact as to whether the mining block granted in favour of the petitioner is within the territory of the State of West Bengal or Orrisa. In spite of specific order being

passed way back on 13th August, 2018, the respondents did not take any step to ascertain the said fact. The respondents are not in a position to execute the lease deed in favour of the petitioner primarily on the ground that the petitioner do not know as to whether the said mining block is within the territorial limit and jurisdiction of the State of West Bengal or not. Moreover, Rule 34 empowers the respondent authority to execute the pending lease deed in favour of a person who was considered as 'L1' bidder in respect of a mining block.

Thus, the instant writ petition is disposed of directing the ADM and DL&LRO, Paschim Medinipore to inform the petitioner within 15 days from the date of communication of this order that the block allotted to the petitioner for mining operation falls within the territorial limit of West Bengal. On receipt of such information, the petitioner shall obtain environment clearance certificate and submit the plan of mapping to the ADM and DL&LRO, Paschim Medinipore within 30 days thereafter. The ADM and DL&LRO, Paschim Medinipore shall execute the lease deed in favour of the petitioner within 60 days from the date of communication of this order. Lease period shall commence from the date of execution of the lease deed.

With the above order, the instant writ petition is **disposed of** on contest, however, without cost.

(Bibek Chaudhuri, J.)