

IN THE HIGH COURT AT CALCUTTA
Constitutional Writ Jurisdiction
Appellate Side

Present:

The Hon'ble Justice Jay Sengupta

W.P. No. 9932(W) of 2012
Alpana Halder
Versus
The State of West Bengal & Ors.

For the petitioner : Mr. Mir Anowar
.....Advocate

For the State : Mr. Soumitra Bandopadhyay
Mr. Prasanta Behari Mahata
.....Advocates

Heard lastly on : 09.02.2023

Judgment on : 08.05.2023

Jay Sengupta, J.:

1. This is an application under Article 226 of the Constitution of India, inter alia, praying for declaration that the amendment of 2011 of the West Bengal Minor Mineral Rules, 2002 was ultra vires and for setting aside of the impugned order vide Memo No. 7/289/570/MM/12 dated 14.03.2012 passed by the Additional District Magistrate and District Land and Land Reforms Officer, Burdwan.

2. Learned counsel appearing on behalf of the petitioner submitted as follows. A Long Term Mining Lease deed of five years was executed and registered by and between the government of West Bengal and the petitioner on 24.11.2006 in respect of Plot No. 543 (P) of Mouza – Mirchoba, J.L. No. 33, under Burdwan Police Station, now District – Purba Bardhaman, measuring about 5.00 acres of land in the river bed of Damodar. Therefore, the lease term was till 23.11.2011. As per the said lease deed Part – VIII, para 3, there was a renewal clause of the lease. As per Rule 12(1) of West Bengal Minor Mineral Rules, 2002, the renewal application should be made at least six months before the date on which the lease was due to expire, but not before nine months from such date of expiry. The petitioner's lease period started from 24.11.2006 and accordingly, the lease period of five year would expire on or about 23.11.2011. As such, application for renewal of lease was made by the petitioner on 05.08.2011 along with challan of Rs. 500/- as application fees and other requisite documents. The said renewal application was rejected by the order dated 14.03.2012. The said order was passed purportedly owing to the amended provisions of the West Bengal Minor Mineral Rules, 2002 vide Govt. Notification No. 809/CI/0/M.M/84/11 dated 01.12.2011. Subsequently, on 4th July, 2014 a solemn order was passed by this Hon'ble Court in W.P. No. 16526(W) of 2013 (In Re: Swapn Sarkar vs. The State of West Bengal & Ors.) along with other writ petitions, whereby the said amended Rules were struck down. Therefore, prayer (a) of the writ petition ought to be allowed in view of the said solemn order dated 4th July, 2014 passed by this Hon'ble Court and the

prayer (b) of the writ petition also be allowed by setting aside the order impugned being Memo. No. 7/289/570/M.M./12 dated 14.03.2012. So far as the prayer (c) of the writ petition was concerned, the petitioner prayed that the authority might be directed to consider the said renewal application afresh. After striking down the said amended Rules, the concerned authority had passed a number of orders of renewal of many other applicants. Thereafter, vide a Notification No. 428-CI/O/MM/84/11 (Part-II), dated 29th July, 2016 the West Bengal Minor Mineral Concessions Rules, 2016 came into force and Rule 62(1) West Bengal Minor Mineral Rules, 2002 was repealed. The Rule 62(2) of the West Bengal Minor Mineral Concessions Rules, 2016 provided that “Notwithstanding such repeal, anything done, any action taken or any prosecution started under the said rules, shall be deemed to have been validly done or taken or started, as the case may be, under the corresponding provisions of these rules.” Since the writ petition was under consideration and meanwhile the said West Bengal Minor Mineral Rules, 2002 was repealed, the prayer for renewal of lease had not attained finality. The provision contained under Rule 5(1) (a) of the West Bengal Minor Mineral Concession Rules, 2016 ought to be taken into consideration while considering the prayer of the petitioner was renewal of lease i.e. for another term of five years. So, in the instant case, the lease period ought to be for the period of 10 years. Besides, Rule 5 of the West Bengal Sand (Mining, Transportation, Storage and Sale) Rules, 2021 provided the “period of Sand Mining Lease as minimum five years and maximum twenty years.” So, the petitioner might be allowed further period

of five years upon fulfilling all the formalities i.e., as per the present Rules. In the lease deed (the first term lease deed) there was clause in Part IX, General Provisions 12 for modification of terms and conditions of lease. The respondent thereafter introduced The West Bengal Sand Mining Policy, 2021. But, a policy could not take the place of a law. So, it would not be applicable in case of the petitioner.

3. Learned counsel representing the State submitted as follows. Smt. Alpana Halder was an erstwhile lessee on plot no. 543(P) of Mouza – Mirchoba, J.L. No. 33, Police Station and District- Burdwan (now Purba Bardhaman) with an area 5.00 acres. Her long term mining lease was registered on 08.12.2006 and she got possession over the lease area on 17.01.2007. She made an application on 05.08.2011 for renewal of mining lease as the date of expiry of her mining lease was 07.12.2011. She filed renewal application 04(four) months (approx.) before the date of expiry of her mining lease. For the disposal of the matter, the petitioner was requested to appear for the hearing at the office of the A.D.M. and D.L. & L.R.O., Burdwan. The petitioner was present on aforesaid two dates at the hearing and was heard. Her application for renewal of the long term mining lease was rejected by the D.M., Burdwan as per the amended provisions of West Bengal Minor Mineral Rules, 2002 which came into effect from 05.12.2011. Then the petitioner informed vide memo no. 07/289/570/MM/12 dated 14.03.2012 by the A.D.M. and D.L. & L.R.O., Burdwan and the application for renewal of mining lease was rejected. Being dissatisfied with the said order the petitioner filed the instant writ petition being W.P. NO. 9932(W) of

2012. She was asked to file application accordingly and take part in Tender-cum-Auction process when the same would be notified in future. But, later on such amendment was declared ultra vires vide order dated 4th July, 2014 of this Court. The writ petitioner had the opportunity to press this matter previously before the Hon'ble Court, but she failed to do so for reasons best known to the writ petitioner. If the said matter had been adjudicated under the provisions of the WBMM Rules, 2002, then for renewal of mining lease, as per provisions of Rule 12 sub Rule 1, "(1) An application for renewal of a mining lease shall be made to the State Government or to an officer duly authorized by the State Government in this behalf in Form D at least six months before the date on which the lease is due to expire, but not before nine months from such date of expiry through the Chief Mining Officer or the Mining Officer in charge of the concerned area or such other officer or officers as may be authorized by the State Government in this behalf." But, in the instant case the date of expiry of the mining lease was 07.12.2011 and she filed renewal application on 05.08.2011 i.e., 04 (four) months (approx.) before the date of expiry of her mining lease. Thus, the provision of Rule 12 of the WBMM, Rules, 2002 was not complied with. Moreover, the said provision was also mentioned in Part VIII under page 24 Paragraph 4 of the Mining lease deed of the writ petitioner. So, the petitioner was not entitled for extension or renewal. Furthermore, the Joint Secretary Department of Industry, Commerce & Enterprises (Mines Branch) issued a Notification No. 215-CI/O/MIN/GEN-MIS/07/2017 dated 26th March, 2018 about renewal of existing mining lease executed under West Bengal Minor

Mineral Rules, 2002, wherefrom it revealed that there was no provision of mining leases now. The leases would lapse once that lease period was over. The subsisting leases might be intimated accordingly. The applicants for renewal should be informed that they would have to apply online for a new mining lease through competitive bidding and such bids were invited from the district authority. Reliance was placed on the notification under reference. Moreover, the West Bengal Sand Mining Policy, 2021 came into effect, w.e.f. July 30, 2021, wherein Rule 6 (iii) provided, “in existing leases, the lease shall not renewed and shall automatically be resumed and vested with the State Government, upon expiry of such leases. The State Government shall lease the sand mines to WBMDTCL or any agency recommended by it.”

4. I heard of the learned counsels for the parties and perused the writ petition, the affidavits and the written notes of submissions filed by the parties.

5. When it comes to the question of rights and liabilities in respect of a mining lease entered into under certain provisions of law, then the same ought to be continued to be governed by such provisions, unless a constitutionally valid prospective amendment alters the same. But, the amendment of 2011 to the Rules of 2002 was purportedly declared ultra vires by this Court.

6. Nevertheless, it may be pertinent to mention that according to a notification dated 26th March 2018 about renewal of existing mining leases executed under the West Bengal Minor Mineral Rules 2002. It appears that

now there are no provision for mining leases. The leases would lapse once the lease period is over. Thereafter, the applicants for renewal would have to apply online for a new mining lease through competitive bidding. Moreover, the West Bengal Sand Mining Policy, 2021 came to effect on 30th July, 2021. Rule 6(iii) therein provided that the existing leases shall not be renewed and shall automatically be vested with the State, upon expiry of such leases. The State Government shall lease out the sand mines to WBMDTCL or any agency recommended by it.

7. Be that as it may, if the question of extension of mining lease is adjudicated under the provisions of West Bengal Minor Mineral Rules, 2002, then, it would be governed by the provisions of Rule 12(1). This provision had not been struck down. The said Rule provided that an application for renewal of mining lease shall be made at least six months before the date when it is due to expire, but not before 9 months. This provision is also reflected in the lease deed. But, in the instant case although the date of expiry of the mining lease was 07.12.2011, the petitioner filed the renewal application on 05.08.2011 i.e., about four months before expiry of the mining lease. Thus, as contended by the respondents, the provision of Rule 12 was also not complied with. Therefore, on this score the petitioner may not be entitled to renewal of such lease.

8. However, this is not the ground on which the impugned order of rejection was passed. The impugned order has to be adjudged on the reasons cited therein and these cannot be supplemented by fresh reasons provided by the State at this stage. Moreover, in exercise of its powers under

Article 226 of the Constitution, this Court ordinarily would not substitute its own reason or supplement the reasons given in the impugned order.

9. The impugned order cannot stand as it was based on the amended provision of 2011 of the Rules of 2002 that was purportedly declared ultra vires by this Court, as discussed earlier.

10. Therefore, the impugned order is set aside and the matter is remanded back to the Additional District Magistrate and DL & LRO for fresh consideration after hearing the parties, within six weeks from the date of communication of this order.

11. The parties shall, however, be entitled to raise all the points therein including the grounds taken up herein.

12. Urgent photostat certified copies of this judgment may be delivered to the learned Advocates for the parties, if applied for, upon compliance of all formalities.

(Jay Sengupta, J.)