

IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
APPELLATE SIDE

The Hon'ble **JUSTICE BIBEK CHAUDHURI**

WPA/14193/2013

Khandakar Samsuddin
-Vs-
State of West Bengal & Ors.

For the Petitioner: Mr. Rampada Pal, Adv.

Hearing concluded on: 5 July, 2023.

Judgment on: 25 July, 2023.

BIBEK CHAUDHURI, J. : –

1. This instant writ petition is filed by the petitioner to command the respondent authority to grant him renewal of mining lease on the basis of his application dated 08.04.2013 in respect of 5.00 acres of land in the river bed of Damodar.

2. The petitioner, Khandakar Samsuddin is a resident of Village Hijalna in the district of Burdwan, West Bengal. On the basis of his application dated 18.06.2006, the then Deputy Secretary, Government of West Bengal, Commerce and Industries Department by G.O. No. 218 (22)-CI/M2 dated 31.01.2007 issued a grant order for a long-term mining lease for extraction of sand for commercial purpose in respect of plot No. 363 (P) of Mouza Manikhati J.L. no.158 P.S. Burdwan Sadar-II District Burdwan measuring about 5.00 acres of land in the river bed of Damodar. On the basis of the grant order the Additional District Magistrate, L.A,

Burdwan on 07.11.2008 executed the final mining lease deed and the same was registered on 03.12.2008 by the registering authority bearing No.1223 of 2008. On 20.05.2009, the Revenue Officer handed over the leasehold area of the land to the petitioner.

3. The petitioner states that during the continuation of the mining operation, on 08.04.2013, he filed an application for renewal of the mining lease under Rule 12(1) of the West Bengal Minor Mineral Rules, 2002 by maintaining all formalities. The petitioner states that by memo No. 08/12/467/MM'13 dated 22.04.2013 the Additional District Magistrate and District Land and Land Reforms Officer Burdwan rejected the said renewal of mining lease application dated 8/9.04.2013 under the amended provisions of the West Bengal Minor Mineral Rules, 2002, vide Notification No.809/CI/0/MM/84/11 dated 01.12.2011 with effect from 05.12.2011 as the grant of mining lease of river bed materials is governed by Rule 16(B) of the Rule of 2002.

4. The petitioner argues that the impugned order dated 22.4.2013 is wholly arbitrary and bad in law. He states that he filed an application for renewal of the mining lease under Rule 12(1) of the West Bengal Minor Mineral Rules, 2002 read with Part VIII Clause 3 Page 37 of the lease deed bearing No. 1223/2008, so renewal of mining lease should be granted in terms of law and lease agreement thereof. He submits that his performance of extraction is satisfactory and he has paid all royalty and cess as per the demand of the authority for extraction of sand, so he is entitled to get renewal of mining lease under the extant Rules as per Rule

12(1) of the Rules of 2002. He contends that the amended provision of Rules 2002 by Notification dated 5.12.2011 is not applicable in the instant case as the mining lease was granted to him in the year 2008 and the renewal is the continuation of the lease vide Rule 12(2) of West Bengal Minor Mineral Rules, 2002 read with Clause 3 Chapter VIII of the registered lease deed and as such the impugned order dated 22.4.2013 is liable to be set aside.

5. He contends that the amended provisions of Rules 2002 through Notification dated 5.12.2011 suspended Rule 5 to 16 by Rule 16A by inserting Rule 16B for grant of mining lease by calling an auction but in the said Notification no bar has been imposed for renewal of mining lease which was granted before 5th December 2011, so, the authority has misconstrued the law and rejected the renewal application of the petitioner. He also contends that the Notification dated 05.12.2011 has no retrospective effect and that there was no whisper thereof, so the renewal application filed by the petitioner under Rule 12(1) of the West Bengal Minor Mineral Rules, 2002 cannot be rejected by virtue of the amendment of Rule dated 05.12.2011. An amendment of substantive law is not retrospective unless expressly laid down or by necessary implication inferred. So, in the instant case there is no whisper and or clear intention of the legislature to give retrospective effect to the amendment by Notification dated 5.12.2011 and as such the renewal application of the petitioner cannot be frustrated by the operation of said amended Rules,

2011 and the implementation of Rule 16B will not be a positive approach towards the law of the land.

6. The respondents were not represented by their learned Counsels at the time of argument. Therefore, this Court proceeds to decide the instant writ application on the basis of submission made by the learned Advocate for the petitioner. The issue relating to applicability of the amended provision of West Bengal Minor Mineral Rules, 2002 came up for consideration before Division Bench of this Court in WP No.16526(W) of 2013 (Swapan Sarkar vs. State of West Bengal) decided on 4th July, 2014 wherein the Division Bench of this Court was pleased to hold that the decision taken by the concerned authority in refusing to grant the renewal of lease in favour of the petitioners was illegal and accordingly the impugned decision was set aside. The concerned authority was directed to consider the petitioner's application for renewal in the light of the provision contained in Rule 12 of the West Bengal Minor Mineral Rules, 2002 and take its ultimate decision in this regard without applying the provision of the amended rules which have already been declared as ultra vires. The Division Bench also held that until such decision is taken, the petitioners lease was deemed to be extended. Upon payment of royalty and/or rent and/or other fees realizable from them as per Rule 20 of the West Bengal Minor Mineral Rules, 2002 for the period during which the lease continued as per the deeming provision of Rule 12(6) of the West Bengal Minor Mineral Rules, 2002 and the fate of their application for renewal would be ultimately determined by the prescribed authority in the

manner indicated in the said judgment. In WP No.9932 of 2012, Alpana Halder vs. State of West Bengal & Ors decided on 8th May, 2023, a Coordinate Bench held that the order of rejection of renewal of mining lease cannot stand as the said order was passed on the basis of the amended provision of 2011 of the West Bengal Minor Mineral Rules, 2012 that was declared ultra vires by this Court in Swapan Sarkar vs. State of West Bengal & Ors (supra).

7. For the reasons stated above the instant writ petition is allowed.
8. The impugned order dated 22nd April, 2013 is quashed and set aside.
9. The respondent No.2 and 3 are directed to grant renewal of mining lease in favour of the petitioner on the basis of his application dated 8th April, 2013 in respect of 5 acres of land in the river bed of Damodar specifically described in the lease deed.
10. The instant writ petition is, accordingly, disposed of.
11. There shall be, however, no order as to costs.

(Bibek Chaudhuri, J.)