

DL-13

25.07.2023
Court No.5
(AD)

MAT 1186 of 2023
With
IA No.: CAN 1 of 2023

Arsed Ali Sekh
Vs.
The State of West Bengal & Ors.

Mr. Sudip Deb
Ms. Ipsita Ghosh

... for the appellant.

Mr. Soumitra Bandhyopadhyay
Mr. Priyabrata Batabyal

... for the State.

Mr. Sanjay Saha
Mr. Subhasish Bhattacharya

... for the respondent no.2.

The appeal is directed against an order dated June 7, 2023 passed in WPA 11453 of 2023.

By the impugned order, the learned Trial Judge noted that, there was an appeal available under Rule 51 of the West Bengal Minor Minerals Concessions Rules, 2016 and, therefore, chose not to exercise discretionary jurisdiction in view of the statutory alternative remedy being available.

Learned Advocate appearing for the appellant submits that, the writ petitioner entered into a lease for quarry of sand. The lease period was for a period of five years. The lease was entered into in 2018. COVID intervened. According to him, the writ petitioner is entitled to extension

of period of the lease for the period during which, there was a pandemic declared.

Referring to the other facts of the matter, learned Advocate appearing for the appellant submits that, the appellant approached the Writ Court by way of WPA 28244 of 2022 seeking extension of the period of lease. Such writ petition was disposed of by permitting the appellant to make a representation which the appellant did by a writing dated January 5, 2023. Such representation was disposed of by an order dated January 30, 2023 passed by the concerned Additional District Magistrate and District Land & Land Reforms Officer. He submits that, the order dated January 30, 2023 proceeds on the basis of applicability of the West Bengal Sand (Mining, Transportation, Storage & Sale) Rules, 2021. He submits that, since the concerned authority considered the Rules of 2021 to be applicable, the question of appellant preferring an appeal under the Rules 2016 does not arise. Moreover, neither the Rules of 2016 nor the Rules of 2021 contained any specific provision for extension of lease. Therefore, the writ petitioner is left with no other remedy but to approach a Writ Court.

State and the respondent no.2 are represented.

Apparently, a lease was executed between the petitioner and the State on February 26, 2018 with such lease being registered on March 9, 2018. The lease was for quarry of sand. It was valid for a period of five years.

Petitioner approached the Writ Court initially by way

of WPA 28244 of 2022 seeking extension of the time period of the lease due to the intervening COVID. Such writ petition was disposed of by an order dated January 3, 2023 permitting the appellant to make a representation and such representation to be decided by the authority concerned.

Acting in terms of the order dated January 3, 2023, the appellant made a representation dated January 5, 2023 which was considered and disposed of by the authority on January 30, 2023.

Being aggrieved by the order dated January 30, 2023, the appellant approached the Writ Court again by way of WPA 11453 of 2023 which was disposed of by the impugned order dated June 7, 2023 permitting the appellant to file an appeal under the Rule 51 of the West Bengal Minor Minerals Concessions Rules, 2016.

The contention that, neither the Rules of 2016 nor the Rules of 2021 permitted an extension as claimed by the appellant in view of the force majeure clause appearing in the deed of lease, the only point available to the appellant is one of a writ petition, is belied by the conduct of the appellant itself.

Initially, the appellant approached the Writ Court by way of WPA 28244 of 2022 seeking extension of the period of lease on the ground of force majeure. Such writ petition was disposed of by the order dated January 3, 2023 permitting the appellant to make a representation which the appellant did. The appellant at that date did not carry any

appeal claiming that, neither the Rules of 2016 nor the Rules of 2021 permitted an extension and, therefore, the writ remedy is only remedy available to the writ petitioner.

The appellant taking a stand and acting on the order dated January 3, 2023 should not be permitted now to contend that writ remedy is the only remedy available to the appellant. The impugned order notes that, there is an appeal provision under Rule 51 of the Rules of 2016. Rule 51 of the Rules of 2016 allows any party aggrieved by a decision to prefer an appeal. There is a statutory alternative remedy available to the writ petitioner to assail the order dated January 30, 2023 passed by the Additional District Magistrate and District Land & Land Reforms Officer.

Nothing is placed before us to suggest that the statutory alternative remedy available under Rule 51 of the Rules of 2016 is not efficacious or speedy.

In such circumstances, we find no ground to interfere with the discretion exercised by the learned Single Judge by relegating the appellant to the remedy of an appeal as provided under Rule 51 of the Rules of 2016. However, since Rule 51 prescribes a period of limitation, in the event, the appellant prefers an appeal within seven days from date, the appellate authority is requested to consider such appeal to be within the period of limitation prescribed by the statute.

MAT 1186 of 2023 along with all connected

applications are disposed of without any order as to costs.

(Debangsu Basak, J.)

(Md. Shabbar Rashidi, J.)

