

DL-16

25.07.2023
Court No.5
(AD)

MAT 1190 of 2023
With
IA No.: CAN 1 of 2023

Rahim Mallick
Vs.
The State of West Bengal & Ors.

Mr. Sudip Deb
Ms. Ipsita Ghosh

... for the appellant.

Mr. Soumitra Bandyopadhyay
Mr. Srinath Singha Roy

... 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 11440 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 291 of 2023 seeking extension of the period of lease. Such writ petition was disposed of by directing the authorities to dispose of the representation which the appellant did by a writing dated November 16, 2022. Such representation was disposed of by an order dated March 21, 2023 passed by the concerned Additional District Magistrate and District Land & Land Reforms Officer. He submits that, the order dated March 21, 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 January 9, 2018 with such lease being registered on January 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 291 of 2023 seeking extension of the time period of the lease due to the intervening COVID. Such writ petition was disposed of by an order dated February 10, 2023 directing the authorities to dispose of a representation dated November 16, 2022.

The representation dated November 16, 2022 was considered and disposed of by the authority on March 21, 2023.

Being aggrieved by the order dated March 21, 2023, the appellant approached the Writ Court again by way of WPA 11440 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 291 of 2023 seeking extension of the period of lease on the ground of force majeure. Such writ petition was disposed of by the order dated February 10, 2023 directing the authorities to decide the representation dated

November 16, 2022. The appellant at that point of time 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 the only remedy available to the writ petitioner.

The appellant taking a stand and acting on the order dated February 10, 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 March 21, 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 1190 of 2023 along with all connected applications are disposed of without any order as to costs.

(Debangsu Basak, J.)

(Md. Shabbar Rashidi, J.)

