

**IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
APPELLATE SIDE**

Present:

The Hon'ble Justice Debangsu Basak
And
The Hon'ble Justice Md. Shabbar Rashidi

**MAT 1472 of 2023
with
IA NO: CAN 1 of 2023**

**State of West Bengal & Ors.
VS.
MA Sarada Enterprise**

For the Appellants : Mr. Supratim Dhar,
Mr. Priyabrata Batabyal, Advocates

For the Respondent: Mr. Sabyasachi Chatterjee,
Mr. Debabrata Mondal,
Mr. Mir Anwar,
Mr. Dinesh Ch. Mondal, Advocates

Heard & Judgment on: August 10, 2023

DEBANGSU BASAK, J.

1. The appeal is directed against an order dated June 15, 2023 passed by the learned trial Judge in WPA 28300 of 2022. All parties to the appeal are represented. Appeal is taken up for final hearing.

2. By the impugned order, the learned trial Judge quashed a notice of auction dated December 8, 2022. Learned Judge held that the State respondents failed to apprise the Court as to under what provision such

notice of auction dated December 8, 2022 was issued and whether any such provision for auction of excess sand excavated by the lessee exists at all or not. Learned Judge held that the relevant Statute and Rules are silent with regard to such provision for auction of seized excavated sand.

3. Learned advocate for the appellants submits that, the private respondent herein was granted a lease for mining of sand for a particular area up to a particular limit. The private respondent applied for additional excavation right which was granted. Thereafter, on inquiry, the authorities found that the private respondent stacked excess sand over and above the additional amount permitted to be excavated. The private respondent accepted such position by filing an affidavit affirmed on July 7, 2022. He submits that, 41,91,070 cft. of sand was excavated above the mining plan yearly limit based on the off-line permit and was so acknowledged in the affidavit.

4. Learned advocate for the appellants draws the attention of the Court to the writing dated September 26, 2022 and submits that, excess sand that was excavated was seized and steps were taken for the purpose of putting the same on sale by way of an e-auction. He refers to the notice inviting e-auction dated October 18, 2022. He also draws the attention of the Court to the corrigendum issued on December 8, 2022 to the notice dated October 18, 2022. He submits that, the notice inviting e-auction was in respect of very many Districts. Initially, the learned trial Judge stayed the operation of the notice of e-auction in a separate writ petition. Subsequently, such stay was vacated. However, so far as the present private respondent is concerned, the interim order was directed to be continued. Ultimately, by the impugned order, the learned Judge held that there was no authority to conduct the e-auction.

5. Learned advocate appearing for the appellants draws the attention of the Court to the provisions of Mines and Minerals (Development and Regulation) Act, 1957. He submits that, the notification dated January 25, 2022 was issued in exercise of powers under Section 15 and Section 23(C) of the Act of 1957 called the West Bengal Sand (Mining, Transportation, Storage and Sale) Rules, 2021. He submits that certain powers were vested upon the District level Sand Committee and the State level Sand Committee in terms of the Rules of 2021. Such Rules provide for sale of sand, amongst others. He refers to the writing dated August 12, 2022, where the State Government, specified that, in case of any stock of sand found without permission, the same is to be seized and auctioned following due process as per law. He refers to the notification dated July 29, 2016, called, the West Bengal Minor Minerals (Auction) Rules, 2016 and submits that, such Rules apply to all minor minerals as specified in Clause (e) of Section 3 of the Act of 1957. Sand is a minor mineral as specified therein. Therefore, according to him, there are adequate provisions in the Statute for the purpose of conducting a seizure and e-auction of sand excavated in excess of the approved limit and/or the additional approved limit.

6. In such circumstances, he submits that, the impugned order should be set aside.

7. Learned advocate appearing for the private respondent submits that, the authorities did not adhere to the prescription of law. He submits, referring to the West Bengal Sand (Mining, Transportation, Storage and Sale) Rules, 2021 that, any excess sand is required to be seized and a criminal case instituted. In the facts of the present case, no seizure was

done. No criminal case was instituted. His client is ready and willing to pay the royalty as per law.

8. Learned advocate appearing for the private respondent refers to Rule 6 of the West Bengal Sand (Mining, Transpiration, Storage and Sale) Rules, 2021 as also Rule 25 thereof.

9. Learned advocate appearing for the private respondent submits that, at best, the State can undertake an auction at an appropriate stage. According to him, the appropriate stage is after a seizure as specified in Rule 25 of the Rules of 2021 is made. He submits that, no provision in the Statute exists for the purpose of auction of the sand seized. Consequently, he submits, there is no error in the impugned order.

10. Few facts are admitted. First is that, the private respondent was granted a mining lease to excavate a specified quantity of sand. He applied for and obtained approval for additional excavation, which was granted. The private respondent, thereafter, was found to excavate beyond the additional quantum approved. Private respondent filed an affidavit affirmed on July 7, 2022 acknowledging that the private respondent stacked 41,91,070 cft., above the mining plan yearly limit based on off-line permit.

11. There is a writing dated September 26, 2022 issued by the concerned Block Land & Land Reforms Officer informing the private respondent that, 21,95,015 cft. sand stacked above the permissible limit would be put into auction in due course of time in terms of order dated August 12, 2022.

12. August 12, 2022 is a writing of the Secretary, Government of West Bengal, Department of Industry, Commerce and Enterprise in relation to Minor Mineral Mining and Centralized On-line portal. It refers to the West

Bengal Sand Mining Policy, 2021 and West Bengal Sand (Mining, Transportation, Storage and Sale) Rules, 2021. It makes various provisions for the purpose of keeping strict vigil against illegal mining of sand operation. It prescribes as follows:-

"In case of any stock found without any permission, the same is to be seized and auctioned following due process as per prevailing rules. The details of individual/company winning the stock may be intimated to the state nodal agency(WBMDTCL) for creation of online login account for submission of the statutory dues and E-challan generation for disposal of the said stock in the prescribed format (Annexure-3)"

13. As noted above, the order dated August 12, 2022 of the Secretary, Government of West Bengal Industry, Commerce and Enterprises Department refers to the Rules of 2021.

14. Rules of 2021 was referred to by the private respondent also. In particular, Rules 6, 21 and 25 were relied upon by the private respondent. Rules 6, 21 and 25 of the Rules of 2021 are as follows :-

"6. Sand Mining Plan (1) *The holder of letter of intent or government order by whatever name called for grant of sand mining lease within such time as provided therein, shall submit a sand mining plan including a sand mine closure plan duly prepared by a Recognised /Qualified Person of Indian Bureau of Mines for approval of the State Government.*

(2) Every sand mining plan duly approved under these rules shall be valid for the entire duration of the sand mining lease.

(3) The sand mining plan as specified under sub-rule (1) shall be reviewed from time to time.

(4) The holder of sand mining lease shall carry out sand mining in accordance with the sand mining plan as approved under this rule.

21. Authorised Officers:- *The State Government may from time to time authorise officers as Authorised Officers for carrying out duties and exercising rights specified under the rules, by notification published in the Official Gazette.*

25. Power to Seize (1) *Whenever any person carries out any sand mining operations or causes to be carried out any sand mining operation without any lawful authority, and for that purpose, uses any tool, equipment, carrier, or any other thing("property"), such property shall be liable to be seized by the Authorised Officer.*

(2) *Every Authorized Officer seizing any property under these Rules shall photograph the property and place on such property a mark in such manner as may be specified, indicating that the same has been so seized and shall raise a ticket on the centralized portal and inform the person from whom the property is seized, in writing about such seizure and the applicable amount for release of property so seized.*

(3) *The property may be released upon payment of applicable amount as may be specified by the State Government in a notification published in the Official Gazette:*

(4) *The applicable amount for release of property shall be paid within one month from the date of knowledge seizure.*

(5) *If the same property is seized more than one time under this Rule, it may be released only on payment of at least fifty percent of the showroom value of the property.*

(6) *If the specified amount is not duly paid within the specified time, the authority specified by the State Government by notification published in the Official Gazette, may confiscate and auction such property."*

15. Rule 6 speaks of sand mining plan. Rule 6(4) requires the holder of sand mining lease to carry out sand mining in accordance with the sand mining plan approved under Rule 6.

16. Authorised officer is prescribed in Rule 21. Rule 21 states that the State Government from time to time may authorize an Officer as Authorized Officer for carrying out duties exercising rights specified under the Rules of 2021 by notification published in the Official Gazette.

17. Power of seizure is prescribed under Rule 25. It prescribes that whenever, any person carries out any sand mining operations or causes to be carried out any sand mining operations without any lawful authority

and for that purpose, uses any tool, equipment, carrier, or any other property, such property shall be liable to be seized by the Authorised Officer. Rule 25(6) authorises the State Government to confiscate and auction property seized in terms of Rule 25.

18. It is not the contention of the private respondent, at least before the trial Court, that the person who seized the 21,95,015 cft. by the writing dated September 26, 2022 was not authorised under the Rules of 2021. The person seizing the same was the concerned Block Land & Land Reforms Officer.

19. Rule 21 of the Rules of 2021 which was relied upon at the behest of the private respondent also prescribes a mechanism for seizure. The contention of the private respondent that, on an earlier occasion, the private respondent was allowed to go away after seizure of excess sand being made, on payment of royalty is of no consequence. There is a distinction between seizure of sand mined over the initial approved level and the seizure of mining minerals mined above the additional approved level.

20. In the facts of the present case, seizure effected of sand is over the additional approved level. Payment of excess royalty for sand mined in excess of additional approved limit will not result in absolution of the consequences of such seizure.

21. Seizure procedure is prescribed by the Rules of 2021. Nothing is placed on record to suggest that seizure procedure prescribed was not followed. The State prescribed a mechanism for sale of seized article by way of auction by the order dated August 12, 2022. E-auction methodology was also prescribed. E-auction of seized articles is one of the transparent ways of disposal of seized articles which were not

released. It is acknowledged to be one of the better mechanisms for price discovery for sale of seized articles.

22. In such circumstances, the authorities cannot be faulted in seizing the excess sand mined and putting the same up for e-auction.

23. In view of the discussions above, the impugned order is set aside.

24. The authorities are permitted to continue with the e-auction forthwith, in accordance with law.

25. District Magistrate will ensure that appropriate criminal cases are initiated as against the delinquent forthwith, in view of the contentions made on behalf of the respondent.

26. MAT 1472 of 2023 along with IA No.: CAN 1 of 2023 are **disposed of** accordingly.

(Debangsu Basak, J.)

27. I Agree.

(Md. Shabbar Rashidi, J.)