

WPA 22632 of 2019

Sarfuddin Saha
Vs.
The State of West Bengal & Ors.

Adv. Tarun Kumar Das,
...for the petitioner.
Adv. Chandi Charan De,
Adv. Anirban Sarkar,
...for the State.

Heard learned counsels for the parties.

The order passed by the Additional District Magistrate and District Land & Land Reforms Officer, Paschim Medinipur on 5th March, 2019 is assailed in the writ petition.

It is submitted on behalf of the petitioner that the petitioner submitted an application for grant of mining lease before the concerned authority in the year 1995 which was not considered by the authority for which the petitioner came up before this Court in a writ petition, being Civil Order No.15123 (W) of 1995. By an order passed on 27th July, 1995, this Court disposed of the writ petition directing the authority to dispose of the application filed by the petitioner in accordance with law within eight weeks from the date of communication of the order which was to be communicated by the petitioner within two weeks from the date of the order. The Court further directed the authority not to take recourse of Rules 7 and 7A of the Minor Minerals Rules

in disposing of the application. In the meantime, petitioner was allowed to extract sand/ gravels from the land in question on payment of royalty to be assessed by the authority. In terms of the said order the petitioner continued mining operation upon payment of royalty.

The application filed by the petitioner was considered and rejected by the authority by an order passed on 20th November, 2018 against which the petitioner further moved before this Court in a writ petition, being WP no. 26301 (W) of 2018. By an order passed on 7th January, 2019 a coordinate Bench of this Court directed fresh hearing of the application solely on the ground of reasonable opportunity of hearing not being afforded to the petitioner. In compliance with the said order, the authority passed the order impugned which is assailed in the writ petition.

The application of the petitioner has been rejected by the concerned authority on two grounds:-

Firstly, since the petitioner did not serve copy of the earlier order of this Court to the authority in compliance with the direction of the Court and, secondly, the petitioner's application could not be entertained in view of the Rules 61 and 62 of the West Bengal Minor Mineral (Concession) Rules, 2016 read with rule 40 of the West Bengal Minor Minerals Rules, 2002.

It is submitted on behalf of the petitioner that since the application was made in the year 1995 when

West Bengal Minor Mineral Rules, 1973 was in force, the said rule shall apply to the case of the petitioner and not the subsequent Rules of 2002 and 2016.

Learned counsel for the State respondents denies and disputes such contention of the petitioner.

It appears from the documents produced by the petitioner that copy of the earlier order of this Court was duly communicated by the petitioner to the authority. Also, the order impugned is bereft of any reasoning with regard to the scope of entertaining the application in terms of the earlier and existing rules.

Learned counsel for the State respondents also submits that the matter may be remanded to the concerned authority for reconsideration.

In view of the above, the order impugned passed on 5th March, 2019 by the Additional District Magistrate and District Land & Land Reforms Officer, Paschim Medinipur is set aside.

The concerned authority, being the 3rd respondent herein, is directed to revisit the application and pass a reasoned and speaking order upon considering the submission made on behalf of the petitioner/his authorised representative as well as the provisions laid down in Rules 61 and 62 of the West Bengal Minor Mineral (Concession) Rules, 2016 and Rule 40 of the West Bengal Minor Minerals Rules, 2002.

The authority is directed to communicate the order to the petitioner within a week thereof.

With such observations and directions, WPA 22632 of 2019 is disposed of.

There shall however, be no order as to costs.

Since no affidavit in opposition is invited, the allegations contained in the petition are deemed not to be admitted.

Urgent certified website copy of this order, if applied for, be furnished to the parties on usual undertakings.

(Suvra Ghosh, J.)