

WPA 28287 of 2022

Arunava Sasmal
Vs.
The State of West Bengal & Ors.

Adv. Timir Baran Saha,
...for the petitioner.
Adv. Chandi Charan De,
Adv. Anirban Sarkar,
...for the State.

The order impugned passed by the Sub-Divisional Land and Land Reforms Officer, Kharagpur, Paschim Medinipur on 5th December, 2022 is under challenge in the writ petition.

The petitioner, who is carrying on business of brick field, was asked to deposit Rs.11,88,645/- for extraction of earth and complied with the said demand in its entirety. Subsequently, the authority issued notice upon the petitioner on 29th November, 2022 alleging extraction of earth in excess of the permissible limit by the petitioner. The petitioner was called for a hearing on 5th December, 2022 and the order impugned was issued on 15th December, 2022 directing the petitioner to deposit rupees five lakhs as penalty and Rs.11,25,327/- as the price of the earth as per provision of Rule 50(1) of the West Bengal Minor Minerals Concession Rules, 2016 and Section 21(5)/23A of The Mines and Minerals (Development and Regulation) Act, 1957 respectively.

It is submitted by the learned counsel for the petitioner that allegedly excess earth was not calculated on any legal basis and is only on approximate figure arrived at by the authority upon conjecture.

It appears from the notice issued to the petitioner on 29th November, 2022 as well as the order impugned dated 15th December, 2022 that no measurement was taken by the authority in ascertaining the allegedly excess amount of earth excavated by the petitioner. The amount of excess earth appears to have been arrived at only on the basis of eye estimation without holding any measurement thereto.

In view of the above, this Court is inclined to hold that the notice impugned issued on 15th December, 2022 be set aside.

The Sub-Divisional Land and Land Reforms Officer, Kharagpur, being the 3rd respondent herein, is directed to take measurement of excess earth excavated by the petitioner, if any, in presence of the petitioner/his authorised representative, in accordance with law and come to a reasoned finding to that effect. The entire exercise should be completed within one week from the date of communication of this order.

With the aforesaid observations and directions, WPA 28287 of 2022 is disposed of

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

There shall however, be no order as to costs.

Urgent certified website copy of this order, if applied for, be furnished to the parties upon compliance of necessary formalities.

(Suvra Ghosh, J.)