

**27**  
**15.06.2023**  
Ct. No.10  
b.das

**WPA 28300 of 2022**

**Ma Sarada Enterprise**  
Vs.  
**The State of West Bengal & Ors.**

Mr. Sabyasachi Chatterjee  
Mr. Dinesh Ch. Mondal  
Mir Anowar  
Mr. D. Mondal ...for the petitioner.

Mr. Soumitra Bandyopadhyay  
Mr. Subhasis Bandyopadhyay ...for the State.

Heard learned counsels for the parties.

At the outset learned counsel for the respondents challenges the maintainability of the writ petition on the ground that the order impugned is amenable to appeal under Rule 51 of the West Bengal Minor Mineral Concession Rules, 2016.

In reply, learned counsel for the petitioner places reliance on the authority in Embassy Property Developments (P) Ltd. vs. State of Karnataka & Ors. reported in (2020) 13 SCC 308 and submits that since the petitioner has pleaded lack of jurisdiction on the part of the authority to issue auction notice, the matter can be dealt with by this Court under Article 226 of the Constitution of India.

The challenge in the writ petition is the notice of auction issued on 8<sup>th</sup> December, 2022.

Learned counsel for the respondents has failed to apprise this Court as to under what provision such notice was issued or whether any such provision for auction of excess sand excavated by the lessee exists at all. In fact, the relevant statute and Rules are silent with regard to such provision.

Since the concerned authority had no jurisdiction to issue such notice upon the petitioner in absence of any provision permitting issuance of the same, it can very well be held that the order suffers from lack of jurisdiction. Therefore judicial review of the said order in exercise of jurisdiction under Article 226 of the Constitution of India, is permissible.

On merits, since the notice of auction issued on 8<sup>th</sup> December, 2022 is not supported by any provision entitling the authority to issue such notice, the notice impugned is held to be de hors the statute and is liable to be set aside/quashed.

In view of the above, the notice of auction dated 8<sup>th</sup> December, 2022 is set aside/quashed.

With the above observations and directions this writ petition being WPA 28300 of 2022 is disposed of.

However, there shall be no order as to costs.

Since no affidavit 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 supplied to the parties upon compliance with all requisite formalities.

**(Suvra Ghosh, J.)**