

D/L
Item No 13
30.01.2023
KOLE

MAT 2047 of 2022
With
IA No. CAN 1 of 2022
With
IA No. CAN 2 of 2022

The State of West Bengal & Ors.
-Vs.-
Swapan Sarkar

Mr. Amitesh Banerjee, Sr. Standing Counsel,
Ms. Ipsita Banerjee,
Mr. S. Adak,

...for the appellants/State.

Mr. Mir Anowar,

...for the respondent.

In Re: CAN 2 of 2022 in MAT 2047 of 2022

This is an application for condonation of delay of 362 days in filing the appeal.

Although the delay is substantial, considering the facts and circumstances of the case and the explanation furnished, we condone the delay.

CAN No. 2 of 2022 is accordingly disposed of.

In Re: MAT 2047 of 2022 with CAN 1 of 2022

Affidavit of service filed in court today be kept with the records.

By consent of the parties the appeal and the application are taken up for hearing together.

This appeal is directed against a judgment and order dated December 17, 2021, whereby the respondent's writ petition being WPA 14848 of 2021 was disposed of by a learned Single Judge by giving certain directions.

It appears that a long-term mining lease was granted by the State in favour of the respondent on November 10, 2008. The lease was subsequently renewed by an agreement dated August 8, 2016 for a further period of five years.

Before the learned Single Judge, the respondent/writ petitioner contended that he was given possession of the lease-hold property on or after April 26, 2017. Accordingly, the authorities should extend the period of lease upon consideration of the said period commencing from the date of delivery of possession of the land to the writ petitioner. A further prayer of the writ petitioner was that his representation dated August 12, 2021, made to the authorities, should be considered and disposed of. The learned Judge held as follows:-

“As in the case in hand, the petitioner acquired possession of the land only on or after 26th April, 2017, the period of lease shall be counted from the said date and not from the date of execution of the same. In the result, the period of lease be considered to be valid till 25th April, 2022.

With regard to the other limb of argument made by the petitioner, it appears that the petitioner submitted a representation before the District Magistrate, Purba Burdwan for extension of the period of the validity of the lease, as he was unable to carry on mining operations due to Covid 2019 pandemic and the prolonged lockdown declared by the government.

Let such representation be considered by the 3rd respondent within one month from the date of communication of this order after giving reasonable opportunity of hearing to the petitioner, in accordance with law.

The petitioner shall also be at liberty to pray for consideration of extension of the period from August, 2021 till resumption of

mining operations, the period during which the petitioner was unable to carry on the excavation work.”

Being aggrieved, the State has come up in appeal.

This appeal has really become infructuous. The portion of the impugned order whereby the learned Judge directed that the period of lease would be considered to be valid till April 25, 2022, has worked itself out. That date has gone by.

As regards the representation of the writ petitioner, we are told that the same has been considered and disposed of.

Mr. Banerjee, learned Standing Counsel representing the State, is aggrieved by the fact that the learned Judge directed that the lease would be considered to be valid till April 25, 2022. He submitted that the writ petitioner has been in possession of the land in question since 2008. The renewal of the lease in 2016 was only a matter of paper work. The writ petitioner was always and continuously in possession of the land. Hence, the direction of the learned Judge extending the validity of the lease was uncalled for and will set bad precedent.

Mr. Banerjee further submitted that the delay in completion of paper work as regards renewal of the lease was due to the delay on the part of the writ petitioner to furnish environmental clearance certificate. This is disputed by learned Advocate appearing for the writ petitioner.

We think Mr. Banerjee is right. There is nothing on record to show and learned Advocate for the writ petitioner

has also not been able to demonstrate that at any point of time physical possession of the land in question was returned back to the State. If that be so, i.e., if the writ petitioner was always in possession of the land in question, then, just because there might have been delay in completion of paper work, there was no warrant for extending the lease period. As a matter of principle, we thus clarify that if the lessee in any manner was in continuous possession of the land in question, mere delay in completion of paper work pertaining to renewal of the lease would not be a ground for extending the validity of the lease period.

With the above clarification, the appeal and the connected application are disposed of.

Urgent photostat certified copy of this order be supplied to the parties, if applied for, as early as possible.

(Arijit Banerjee, J.)

(Apurba Sinha Ray, J.)