

Form J(2)

**IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
Appellate Side**

**Present :
The Hon'ble Justice Bibek Chaudhuri**

WPA 24562 of 2012

**Babli Mishra
Vs.
The State of West Bengal & Ors.**

Mr. Mir Anowar
..for the petitioner

Mr. Chandi Charan De, Ld. Addl. Govt. Pleader
Mr. Anirban Sarkar
Mr. Sadhan Halder
..for the State

Item No.44

Heard & Judgment on: 08.08.2023

Bibek Chaudhuri, J.

Affidavit of service be kept with the record.

A mining lease deed was executed by and between the petitioner and the State Government on 31st January, 2007. It is not in dispute that possession of the mining block was handed over to the petitioner after expiry of about four years on 7th April, 2011. The petitioner made an application to the Additional District Magistrate

and D.L. & L.R.O., Burdwan requesting him to allow the petitioner to extract sand from the lease hold block for a full term of five years from the date of handing over possession. The said application was rejected by the jurisdictional D.L.& L.R.O.

Hence, the instant writ petition.

The learned Additional Government Pleader submits that the instant writ petition is not maintainable in view of the provision contained in Rule 16 of the West Bengal Minor Minerals Rules, 2002.

Rule 16 runs thus:—

“16. **Lapsing of lease.**— (1) Subject to the other condition in these rules, where mining operation has not been commenced within a period of one year from the date of execution of the lease or is discontinued for a continuous period of one year after the commencement of such operations, the State Government shall, by an order, declare the mining lease as lapsed and communicate the said order to the lessee.

(2) Where a lessee is unable to commence the mining operation within a period of one year from the date of execution of the mining lease or discontinues mining operations for a period exceeding one year for reasons beyond his control, he may submit an application to the State Government through the Chief Mining Officer or the Mining Officer in charge of the concerned area explaining the

reasons for the same within a period of one month after such expiry of the said one year.

(3) Every such application under sub-rule (2) shall be accompanied by a fee of five hundred rupees deposited in the manner provided in sub-rule (3) of rule 5.

(4) The State Government may, on receipt of an application made under sub-rule (2) and on being satisfied about reasons for the non-commencement of mining operations or discontinuance, pass an order extending or refusing to extend the period of lease, as the case may be, within six months after giving the applicant an opportunity of being heard.

Explanation.- Where the non-commencement of mining operations within a period of one year from the date of execution of mining lease is on account of:

- (a) delay in acquisition of surface rights;
- (b) delay in getting the possession of the leased area;
or
- (c) delay in supply or installation of machinery;
- (d) orders passed by any statutory or competent authority; or
- (e) operation becoming highly uneconomical; or

(f) strike or lock-out.

And the lessee is able to furnish documentary evidence supported by an affidavit duly sworn in, the State Government may consider any or all of these as sufficient reasons for the non-commencement of mining operations within the said period of one year.”

As per the provision of sub-rule (2) of Rule 16 where a lessee discontinues mining operations for a period of exceeding one year for reasons beyond his control, he may submit an application to the State Government through the Chief Mining Officer or the Mining Officer in charge of the concerned area explaining the reasons for the same within a period of one month after such expiry of the said one year.

Admittedly deed of lease was executed on 31st January, 2007. When the petitioner did not get possession of the mining block within a period of one year of execution of the lease deed, he could have filed the application within one month after such expiry of the said one year. However, the petitioner, in the instant case filed application on 3rd November, 2011 i.e. after the expiry of

eleven months from the date of expiry of the term of the entire lease deed.

In view of such circumstances, I am in agreement with the learned advocate for the State respondents that the instant writ petition is not maintainable for violation of the provision contained in Rule 16 of the West Bengal Minor Minerals Rules, 2002.

Accordingly, the instant writ petition is **dismissed** on contest.

There shall be, however, no order as to costs.

(Bibek Chaudhuri, J.)