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**IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
APPELLATE SIDE**

**WPA 3715 of 2023
(Specially Assigned)**

**Ashim Kumar Panja
-Vs-
The State of West Bengal & Ors.**

Mr. Mir Anowar
... for the petitioner

Mr. Sanjay Saha
Mr. Subhasish Bhattacharya
... for the respondent no.8

Affidavit of service filed on behalf of the petitioner is taken on record.

None appears on behalf of the State-respondent.

This writ petition has been filed by the petitioner under Article 226 of the Constitution of India challenging the order dated 28th December, 2022 passed by the respondent no.5 being the Additional District Magistrate and District Land and Land Reforms Officer, Purba Bardhaman rejecting the prayer of the petitioner for grant of fair compensation.

Mr. Mir Anowar, learned Advocate for the petitioner submits that mining lease was granted in favour of the petitioner on 13th July, 2017. During the subsistence of the lease the Government stopped the operation of the lease granted for excavating sand by letter under Memo

No.283/MM/2019 dated 15th May, 2019 on the ground that it may affect the installation of Radial Collector to draw required quantity of water for AMRUT Project under Burdwan Municipality. On such circumstances, the petitioner approached the concerned authority for compensation or other alternative land for mining since the petitioner could not excavate sand in terms of the existing lease. The authority concerned did not dispose of the representation of the petitioner. Being aggrieved by such inaction on the part of the authority concerned, the petitioner filed a writ petition being W.P.A.23981 of 2022 wherein direction was passed upon respondent no.5 to consider the representation of the petitioner. In compliance to the order of this Court as aforesaid, the representation of the petitioner dated 16th August, 2021 was considered by the concerned authority and it was rejected on 28th December, 2022. The petitioner has challenged the said order in the present writ petition since neither any compensation has been given to the petitioner nor any alternative land for mining has been allotted in his favour. He prays for an appropriate order with regard to the aforesaid.

Mr. Sanjay Saha, learned Advocate for the respondent no.8 submits that as per the West Bengal Minor Minerals Concession Rules, 2016 an order passed

by the respondent no.5, Additional District Magistrate which is appealable under Rule 51 of the aforesaid Rules.

In order to appreciate the aforesaid issue, it would be profitable to reproduce Rule 51 of the West Bengal Minor Mineral Concession Rules, 2016 as hereunder:

“51. Appeal – (1) Any person aggrieved by an order made by the District Authority or any officer duly authorised by the District Authority in exercise of the powers conferred upon him by these rules, may, within thirty days from the date of communication of the order to him, prefer an appeal against the order.

(2) The memorandum of appeal shall be made to the concerned Divisional Commissioner, if the order appealed against has been passed by the District Authority.

(3) Each memorandum of appeal shall be accompanied by a treasury Challan showing the deposit of a fee of Rs.1000/- (rupees one thousand) only in the government Treasury or sub-Treasury of the District concerned or in any branch of the State Bank of India doing treasury business or in the Reserve Bank of India at the credit of the State Government under the specified head.

(4) An appeal may be entertained even after the period specified in sub-rule (1)(a), if the applicant satisfies the appellate authority that he had sufficient reasons, for not preferring the appeal within the prescribed period.

(5) The order passed on an appeal shall be final and there shall be no second appeal.”

As per the aforesaid rules any person aggrieved by an order made by the District Authority or any officer duly authorised by the District Authority in exercise of the powers conferred upon him by the rules, may, within thirty days from the date of communication of the order

to him, prefer an appeal against the order. Therefore, the order passed by respondent no.5 is appealable in terms of the aforesaid provision. Since alternative efficacious relief is available to the petitioner in the form of appeal under Rule 51 of the said Rules, hence the present writ petition is not maintainable.

However, the petitioner is granted liberty to prefer appeal before the appropriate authority challenging the order passed by respondent no. 5. Since Rule 51 prescribes a period of limitation, in the event, the appeal is filed by the petitioner within twenty-one days from the date of this order, the appellate authority is requested to consider such appeal to be within the period of limitation prescribed by the statute.

Within the aforesaid observation the writ petition being **W.P.A.3715 of 2023** stands disposed of.

All connected applications, if any, stand dismissed.

Interim order, if any, stands vacated.

There shall be no order as to costs.

Urgent photostat certified copy of the order, if applied for, be given to the parties on compliance of all necessary legal formalities.

(**Bivas Pattanayak, J.**)