

Court No. 2
11.11.2024
(Item No. 9 & 10)
(AB)

IN THE HIGH COURT AT CALCUTTA
Constitutional Writ Jurisdiction
Appellate Side

W.P.A. 25169 of 2024
With
W.P.A. 25174 of 2024

Akash Kumar Dubey
VS
The State of West Bengal & Ors.

Mr. Uday Sankar Chattopadhyay
Ms. Trisha Rakshit
Ms. Rajashree Tah
Ms. Aishwarya Datta

.... For the petitioner

Mr. Soumitra Bandyopadhyay
Mr. Subhasis Bandyopadhyay

.... For the State in WPA 25169 of 2024

Mr. Chandi Charan De, Ld. Addl. Govt. Pleader
Mr. Anirban Sarkar

.... For the State in WPA 25174 of 2024

Mr. Mir Anowar

Mr. Jayanta Mukherjee

. For respondent No. 8 in both the writ petitions

Affidavit of service filed in Court today is taken
on record.

Mr. Uday Sankar Chattopadhyay, learned
advocate appears for the petitioner.

Mr. Subhasis Bandyopadhyay, learned State
advocate appear for respondent Nos. 1, 3 to 7 in
W.P.A. 25169 of 2024.

Mr. Chandi Charan De, learned Additional
Government Pleader appears for respondent Nos. 1, 3
to 7 in **W.P.A. 25174 of 2024.**

Mr. Mir Anowar, learned advocate appears for
private respondent No. 8 in **W.P.A. 25169 of 2024**
and W.P.A. No. 25174 of 2024.

By consent of the parties both these writ petitions are taken up for analogous consideration. The cause of action are identical but the private respondents are only different. Hence, by this consolidated order the two writ petitions are disposed of.

The relevant facts for disposal of these two writ petitions are only narrated.

The writ petitioner claims to be the Power of Attorney holder of the private individual respondents. On perusal of both Power of Attorney, it appears to this Court that, the terms, conditions and stipulations are identical. Hence, this Court deals with the power of attorney dated **September 2, 2022, annexure P-2** at **page 23** to the **W.P.A. 25169 of 2024** (for short the first writ petition). Learned counsel for the petitioner has heavily relied upon the following clauses from the said Power of Attorney.

“(k) for the purpose of managing my affairs to enter into such arbitration references and to appoint such arbitrators as the Attorney may deem fit and proper.

I FURTHER CONFIRM that the powers granted by me to the said Attorney is irrevocable and shall not be revoked by me and any person relying upon his Power of Attorney shall be protected by the representation made herein and the authorities given by me to the said attorney and I shall not challenge or call in question any act done by the said Attorney

individually or jointly or severally for me and on behalf of me and the same shall be binding upon me.

*(l) To do all other lawful acts which are necessary or incidental for the proper adjudication and/or conduct of my said **Sand Quarry Business.***

Relying upon the said clauses from the Power of Attorney petitioner submits that, he has done all the necessary formalities on behalf of the private respondent but subsequently the private respondent has acted in breach of the stipulations of the Power of Attorney to bypass the petitioner and thereby committed a breach of its obligation. The relevant paragraphs from the first writ petition are quoted below:

“11. Your petitioner states that the private respondent is now attempting to withdraw his obligation and is even negotiating with other organizations or individuals to lease the sand pit for a long terms arrangement. The said private arrangement is illegal and the sudden shift from his stands is not only dishonest but also put the petitioner in a very precarious position.

11. Your petitioner state that on 25.09.2024, the petitioner made a representation before the respondent authorities station inter alia that the private respondent executed a power of attorney in favour of the petitioner of 31st December, 2023, in respect to look after and execution of various documents in the officer of the State of West Bengal for starting sand mining

in the above mentioned sand block situated at Galsi Purba Bardhaman. That thereafter the petitioner collected all necessary documents for grant of environmental clearance from the Ministry of Environment, Forest and Climate Change, and submitted all the papers to that effect and also deposited required money for obtaining the environment clearance certificate for the said sand block.

That thereafter petitioner took financial assistance from various investors and used the collected firms to further developed the sites including the construction of a temporary road, for sand extraction which incurred significant expenses. The road was build specifically for the movement of sand carts and the petitioner invested crores of rupees, rest from investors to facilitate the said project. After granting permission from Satya Nand Roy, private respondent, the petitioner formed a syndicate of investors, who collectively finance the project. Private respondent assured the petitioner through the power of attorney that the petitioner would be managing the quarry as a partner and base on this understanding, the petitioner also entered into the agreements with various parties. Even 34 percent of the auction money has been duly deposited into the government account, using the funds collected from the investors with the consent of the private respondents.

That the private respondent is now attempting to withdraw his obligation and is even negotiating with other organizations or individuals to lease the sand pit for a long

term arrangement. The said private arrangement is illegal and the sudden shift from his stands is not only dishonest but also put the petitioner in a very precarious position. Your petitioner prayer before the respondents through his representation, for taking immediate action by not registering the sand pit in favour of the private respondent or anyone until the matter has been resolved in between the petitioner and the private respondent.

Photostat copies of the representation dated....., postal receipt and track report are annexed herewith and marked with letter "P/7".

Identical averments are there in **W.P.A. 25174 of 2024** (for short, the second writ petition).

In the light of the above, the petitioner has prayed for, inter alia, the following relief:

" a) Issue a Writ in the nature of Mandamus directing the respondent authorities not to register deed of lease in favour of the private respondents in terms of the letter of intent dated January 01, 2017 in respect of sand block situated at Mouza Galsi-II/Gohogram/6002/D, in Plot No. 6002(P), JL No. 070, Police Station – Galsi, District – Purba Bardhman."

Both the learned State counsel appearing in the said two writ petitions submit that, the writ petitions are not maintainable as the petitioner seeks to enforce the terms and conditions of the Power of Attorney against the private respondents.

After considering the rival contentions of the parties and upon perusal of the materials on record it appears to this Court that, through this writ petition, though the relief has been prayed against the State authority not to grant Mining lease in favour of the private respondents, but that will be a consequential relief if the petitioner succeeds to his contentions against the private respondents first that the private respondents have acted in breach of their obligation in terms of the said Power of Attorney. To enforce the terms of the Power of Attorney a civil dispute has been raised by the petitioner against the private respondents and the same cannot be touched by this Constitutional Court in exercise of its writ jurisdiction.

In the event, the petitioner succeeds against the private respondents on his claim of specific performance of the terms of the Power of Attorney, then he might have a right to apply before the State authorities seeking not to grant any Mining lease in favour of the private respondents but not at this juncture.

For the foregoing reasons and discussions, this Court is of the firm view that, both this writ petitions are devoid of any merit and are liable to be dismissed.

Accordingly, these writ petitions **W.P.A. 25169 of 2024** and **W.P.A. 25174 of 2024** stand **dismissed**, without any order as to costs.

It is made clear that this Court has not gone into the merits of the claim of the petitioner against the private respondents and the petitioner shall be at liberty to proceed with his cause of action against the private respondents, if any, before the appropriate and jurisdictional Civil forum if the petitioner is entitled to do so in accordance with law. In the event, such civil action is brought by the petitioner against the private respondents the jurisdictional authority and/or Civil Court shall deal with the same in accordance with law and without being influenced by any observation made by this Court.

Since affidavits are not called for, the allegations made in this writ petition are deemed not to have been admitted by the respondents.

Mr. Mir Anowar, learned advocate appearing for the private respondents in both these writ petitions have denied and disputed the submissions made on behalf of the petitioner and specifically denied the execution and existence of the said two Power of Attorney appended to both these writ petitions.

Photostat certified copy of this order, if applied for, be furnished expeditiously.

(Aniruddha Roy, J.)