

29.07.2024
Ct. No. 2
Sl. No. 8
tbsr

WPA 26237 of 2022

Probhat Bauri
Vs.
The State of West Bengal & Ors.

Mr. Pinaki Ranjan Chakraborty
Mr. Pallav Chatterjee
Mr. Monojit Chakraborti
....for the petitioner

Mr. Ashim Kumar Ganguly
Mr. Bellal Shaikh
....for the State

The petitioner was granted a mining lease by the State authority for excavation of sand block. The lease was executed on **January 9, 2009, Annexure P-1 at page 28** to the writ petition. The said lease was for **five years**. The lease expired on **February 9, 2014**.

Referring to a document dated **December 17, 2012, Annexure P-2 at page 52** to the writ petition, Mr. Pinaki Ranjan Chakraborty, learned counsel appearing for the petitioner submits that, the said lease was extended till **January 3, 2017**.

Referring to **Annexure P-5 at page 56** to the writ petition, learned counsel submits that through an application dated **December 7, 2016** the petitioner

applied for extension of the lease for a further period of one year.

Since no step for extension was taken, the petitioner filed a writ petition being WP No. 4974(W) of 2017 when a Co-ordinate Bench by its order dated **June 5, 2017, Annexure P-7 at page 65** directed to respondent no. 2 therein to consider the representation of the petitioner.

Pursuant to the direction, as above, the case of the petitioner was considered and was rejected by an impugned order dated **July 24, 2017 at page 68** to the writ petition.

The petitioner being aggrieved by the said decision for rejection preferred another writ petition being WPA 28989 of 2017. A Co-ordinate Bench of its order dated **December 2, 2021 at page 83** to the writ petition disposed of the said writ petition by directing the respondent no. 2 to consider the case of the petitioner.

Pursuant to the said direction dated December 2, 2021 the case of the petitioner was considered and rejected by the respondent no. 2 by its impugned order dated **February 9, 2022 at page 88** to the writ petition.

Learned counsel for the petitioner submits that, the disposal of the case of the petitioner was not made

by the respondent no. 2 under the said impugned order in strict compliance of the said direction of the Co-ordinate Bench Dated December 2, 2021, the Co-ordinate Bench directed the second respondent while dealing with the case of the petitioner to take notice of the certificates referred to therein. Learned counsel submits that, this guideline was not follow.

Hence this writ petition.

Mr. Ashim Kumar Ganguly, learned additional Government pleader appearing for the respondents submits that, the impugned order dated February 9, 2022 is an appealable order under **Rule 51** of the **West Bengal Minor Minerals Concession Rules, 2016**. Hence this writ petition is not maintainable.

After considering the rival contentions of the parties and upon perusal of the materials on record it appears to this Court that firstly, if at all the direction of the Co-ordinate Bench has not been complied with while disposing of the case of the petitioner by the respondent no. 2 such point could have been raised before the appellate authority.

Secondly, on close scrutiny of the said impugned order, it further appears to this Court that, several factual matrix may be required to be gone into including the application of those certificates and their relevance in the facts of the case of the petitioner as

referred to in the order of the Co-ordinate Bench dated December 2, 2021. Such factual enquiry cannot be done by the writ court.

The remedy provided under **Rule 51** of the said **2016 Rule** is an alternative, efficacious and speedy remedy.

In view of the foregoing reasons and discussions, this writ petition **WPA 26237 of 2022** stands **dismissed**, without any order as to costs.

It is made clear that, this Court has not gone into the merits of the writ petition or merits of the claim of the petitioner or the rival contentions of the parties.

The parties shall be at liberty to urge whatever points they wish to urge before the appellate authority in accordance with law. In the event, an appeal is preferred by the petitioner and the same is held to be maintainable by the appellate authority, then the appellate authority shall dispose of the appeal as expeditiously as possible without granting any unnecessary adjournments to the parties.

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

Urgent certified photo copy of this order, if applied for, be supplied to the parties expeditiously on compliance of usual legal formalities.

(Aniruddha Roy, J.)