

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

Present:

The Hon'ble Justice Partha Sarathi Sen

WPA 3139 of 2024

**Utpalendu Baksi
Vs.
The State of West Bengal & Ors.**

For the petitioner	:	Mr. Sudip Deb, Sr. Adv. Mr. Debashis Saha Ms. Sucheta Pal
For the State	:	Mr. Ayan Banerjee Mr. Debapriya Chatterjee
For the respondent no. 8	:	Mr. Sanjay Saha Mr. Raju Mondal
Heard on	:	24.06.2025
Judgment on	:	24.06.2025

PARTHA SARATHI SEN, J.:

1. This Court has heard learned Advocate for the writ petitioner, learned Advocate appearing for the respondents/State and its functionaries and learned Advocate for the added respondent no. 8 at length.

2. The subject matter of challenge in the instant writ petition is the order dated 19.09.2023 as passed by the respondent no. 6/authority whereby and whereunder the writ petitioner's representation for extension of the period of lease was not considered favourably.
3. From the materials as placed before this Court it reveals that admittedly the writ petitioner was the highest bidder in respect of sand block code no. 0108DR038 and on compliance of all the formalities by the writ petitioner a deed of lease was executed in favour of the writ petitioner for excavation of sand from the said sand block.
4. On the basis of allegation of illegal sand mining activities on the part of the writ petitioner the respondent no. 5/authority by his memo dated 07.03.2022 issued a suspension order against the writ petitioner from carrying on mining activity including transportation of sand and by the self-same memo the writ petitioner was directed to show-cause as to why appropriate action including termination of mining lease would not be issued.
5. The writ petitioner replied to such show-cause. The respondent no. 6/authority while accepting the reply to the show-cause as submitted by the writ petitioner imposed a penalty of Rs. 1,00,000/- which has been communicated to the writ petitioner vide memo dated 20.10.2022.

6. By way of bank transfer the writ petitioner forthwith transferred the said penalty amount together with balance royalty money to the respondent no. 6/authority.
7. It is submitted on behalf of the writ petitioner that even after payment of the penalty amount as imposed by the respondent no. 6/authority, the respondent no. 6/authority did not revoke the order of suspension as issued on 07.03.2022 then and there and ultimately upon much persuasion, such revocation was withdrawn on 29.05.2023.
8. It is submitted on behalf of the writ petitioner that no explanation has been offered by the respondents/ authorities as to what prevented them from withdrawal of the order of suspension immediately on payment of the penalty amount and the respondents/authorities have also not assigned any reason as to why they took seven months time for revocation of the order of suspension.
9. It is submitted further that on account of such delayed withdrawal of suspension order, the writ petitioner could not perform the excavation activity in terms of the said lease for a period of seven months and on account of such suffering, the writ petitioner approached the respondent no. 6/authority by submitting a representation, however, by issuing the order under challenge dated 19.09.2023 the respondent no. 6 most mechanically rejected

the representation of the writ petitioner declining to extend the period of lease for seven months more.

10. It is further submitted on behalf of the writ petitioner that the order under challenge is *per se* illegal and perverse inasmuch as the respondent no. 6/authority by passing the said reasoned order dated 19.09.2023 has failed to visualize that on account of delay in revoking the suspension order of the writ petitioner, the writ petitioner could not extract sand from the leased out sand block for a period of seven months which tantamounts to double jeopardy which is violative of the constitutional provisions.
11. *Per contra*, Mr. Banerjee, learned Advocate appearing on behalf of the respondents/State and its functionaries at the very outset submits before this Court that from the materials as placed before this Court it would reveal that by paying off the penalty the writ petitioner has accepted the allegation of illegal sand mining. It is further argued by Mr. Banerjee that there is hardly any scope to interfere with the order under challenge inasmuch as the respondent no. 6/authority has rightly held that in absence of any specific rule and/or in absence of any specific clause except the clause of 'force majeure' in the deed of lease the period of lease cannot be extended.
12. It is further submitted by Mr. Banerjee that in the event the writ petitioner suffers loss on account of non-action and/or inaction on

the part of the respondents/authorities the only remedy lies with the writ petitioner is to sue the respondents/authorities for the damages. It is thus submitted by Mr. Banerjee that it is a fit case for dismissal of the instant writ petition.

13. Mr. Banerjee further submits before this Court that from page no. 9 of the instant report it would reveal that the writ petitioner has already taken refund of the bank guarantee as has been deposited by him which tantamounts to acquisition over the action of the respondents/authorities. It is further submitted by Mr. Banerjee that the respondents/authorities allowed the writ petitioner to withdraw the bank guarantee upon submission of application made by him.
14. Mr. Saha, learned Advocate appearing on behalf of the respondent no. 8 while adopting the argument of Mr. Banerjee submits before this Court that in terms of the provisions of the lease as has been executed by and between the respondent no. 5 (lessor) and the writ petitioner (lessee), there is hardly any scope for effecting extension of the term of lease as wrongly prayed for.
15. On careful consideration of the entire materials as placed before this Court and after hearing the learned Advocates for the contending parties it reveals to this Court that sufficient materials have been placed before this court that the respondent no. 6/authority was not satisfied to the reply of the show-cause given

by the writ petitioner regarding alleged illegal sand mining and thereafter imposed a penalty of Rs. 1,00,000/- upon the writ petitioner by issuing memo dated 20.10.2022.

16. It is undisputed that the writ petitioner forthwith deposited the said penalty amount.
17. It is pertinent mention herein that while issuing the memo dated 20.10.2022 the respondent no. 6/authority has not imposed any other penalty upon the writ petitioner.
18. Materials have been placed before this Court that revocation of suspension took place on the part of the respondents/authorities by issuance of a memo dated 29.05.2023. No explanation has been given on the part of the respondents/authorities as to what prevented them to revoke the order of suspension immediately on payment of penalty as imposed by the respondent no. 6 by the writ petitioner.
19. Admittedly, on account of delayed issuance of memo regarding revocation of suspension the writ petitioner was unnecessarily deprived from the work of excavation of sand from the leased out sand block.
20. This Court is in agreement with the learned Advocate for the writ petitioner that on account of delayed issuance of revocation of suspension the writ petitioner had to undergo double jeopardy which he is not supposed to suffer but had to suffer purely on

account of inaction and/or non-action on the part of the respondents/authorities resulting violation of the provision of Article 20 (2) of the Constitution.

21. Though it has been contended on behalf of the respondents that in absence of any specific clause in the lease deed such extension cannot be granted but this Court sitting in writ jurisdiction cannot over look the inaction and/or non-action on the part of the respondents/authorities more specifically; the respondent no. 6/authority who is definitely an authority under Article 12 of the Constitution of India and, therefore, his action and/or inaction is amenable to the writ jurisdiction of this Court.
22. In course of his argument Mr. Saha though contended that the order which is under challenge is appealable in nature but this Court is of considered view that availability of the alternative efficacious remedy cannot debar this Court to issue appropriate writ in case it has been found that the order under challenge is *per se* illegal and/or the decision making process of the respondent no. 6/authority has been vitiated for non-consideration of the sufficient materials as placed before him and/or on account of violation of fundamental right of the writ petitioner.
23. This Court thus considers that there are sufficient merits in the instant writ petition and accordingly, the instant writ petition is hereby allowed.

24. Consequently, the order under challenge dated 19.09.2023 as passed by this respondent no. 6/authority is hereby set aside.
25. Consequently, the respondent no. 6/authority is hereby directed to grant extension of lease for further seven months in favour of the writ petitioner in terms of the terms and conditions of the lease deed dated 02.01.2019 as registered on 15.01.2019 in respect of sand block code no. 0108DR038.
26. Before parting with, it is further made clear that the writ petitioner shall have to submit a refundable bank guarantee for the sum of Rs. 18,73,000/- afresh either with the respondent no. 5 or with the respondent no. 6 and he has to comply with all other statutory formalities including obtaining of environmental clearance from the appropriate authority.
27. With the aforementioned observations, the instant writ petition being WPA 3139 of 2024 is disposed of.
28. Urgent Xerox certified copy of this order, if applied for, be given to the parties upon compliance of all necessary formalities.

(PARTHA SARATHI SEN, J.)