

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

**Present:**

**The Hon'ble Justice Partha Sarathi Sen**

**WPA 9108 of 2024**

**Smt. Anima Basu  
Vs.  
The State of West Bengal & Ors.**

|                          |   |                                                          |
|--------------------------|---|----------------------------------------------------------|
| For the petitioner       | : | Mr. Rabiul Islam<br>Mr. Raju Mondal<br>Mr. Masooq Rahman |
| For the State            | : | Mr. Ayan Banerjee<br>Mr. Soumyajit Ghosh                 |
| For the respondent no. 3 | : | Mr. Sanjay Saha                                          |
| Heard on                 | : | 08.05.2025                                               |
| Judgment on              | : | 08.05.2025                                               |

**PARTHA SARATHI SEN, J.:**

1. The writ petitioner, the respondents/State and its functionaries i.e., respondent nos. 1, 2, 4 and 5 and the respondent no. 3 are represented by their respective Counsels.
2. Liberty is given to the learned Advocate-on-Record of the writ petitioner to add Additional Secretary, Department of Industry, Commerce and Enterprises as respondent no. 6 by making

necessary insertion and/or correction in the cause title of the instant writ petition in Court today.

3. By filing the instant writ petition the writ petitioner has prayed for issuance of appropriate writ/writs against the added respondent no. 6 for quashing and/or setting aside the order dated 11.03.2024 whereby and whereunder the said added respondent no. 6 declined to consider the writ petitioner's representation for allowing her to carry out the work of extraction of sand for a period of three years three months that is for 39 months.

4. For effective adjudication of the instant *lis* some facts are required to be discussed and those are narrated below in seriatim:

(i) On 10.04.2013 a deed of lease was executed by and between the Governor of West Bengal (lessor) and one Naresh Chandra Basu (lessee), since deceased, the husband of the present writ petitioner for excavation of sand from Kangsabati River bed, the location and details of the place of excavation has been mentioned in Part 1 of the schedule of the said deed of lease.

(ii) On 26.11.2013 the possession of the said area was handed over to the original lessee.

(iii) Since the said deed of lease was executed for a period of five years the said lease was supposed to expire on 25.11.2018.

- (iv) Admittedly, the said lease was executed by and between the lessor and lessee under the provisions of the West Bengal Minor Minerals Rules, 2002 (hereinafter referred to as the 'said Rules of 2002').
- (v) On 29.05.2015 the original lessee was served with a show cause notice by the respondent no. 5/authority and in the said show cause notice three allegations were leveled against the writ petitioner namely; (a) shortfall of extraction of 1,88,420 cft. of sand from the leased out area for which a demand was made by the respondent no. 5/authority for payment of Rs. 4,33,366/-; (b) shortfall calculated by deducting extracted quantity from targeted quantity for which further demand was made for payment of a further sum Rs. 7,64,409/-; (c) the original lessee had extracted sand outside the lease hold area for which a penalty was proposed to be imposed for a sum of Rs. 8,84,971/-.
- (vi) On 23.12.2015 the respondent no. 5/authority while passing a reasoned order was not satisfied with the reply to the show cause and thus directed the original lessee to pay sum of Rs. 4,33,366/- and a further sum of Rs. 7,64,409/- being the penalty on account of shortfall in extracting sand and lastly imposed a further penalty of

Rs. 8,84,971/- for extraction of sand by the lessee outside his lease hold area.

(vii) Challenging the said reasoned order dated 23.12.2015 as passed by the respondent no. 5 the original lessee carried the said order in appeal before the respondent no. 2/authority.

(viii) On 13.03.2018 the respondent no. 2/authority being the appellate authority while disposing the said appeal came to a finding that the allegation of extraction of sand beyond leased out area could not be established and thus exempted the original lessee from paying the penalty amount as has been imposed by the respondent no. 5/authority on such allegation, however, the said appellate authority being the respondent no. 2 herein considering the admission of the said lessee imposed a penalty of Rs. 2,34,786/- on account of shortfall of extraction.

(ix) On 22.05.2018 the respondent no. 2 herein passed a modified order correcting the quantum of penal amount whereby and whereunder the original lessee was directed to pay Rs. 3,76,840/- instead of Rs. 2,34,786/-

(x) On 31.05.2018 original lessee had deposited the said penalty amount.

(xi) On account of pendency of the aforementioned proceedings before the respondent no. 5 and the respondent no. 2/authority the deceased husband of the writ petitioner could not extract sand from the leased out area for a period of 39 months.

(xii) The writ petitioner being the legal heir and widow of the original lessee thereafter approached the respondent no. 5/authority to allow her to start the work of excavation from the leasehold area in view of the fact that on account of the aforementioned proceedings before the respondent nos. 5 and 3, the five years period of lease had expired in the meantime.

(xiii) By passing an order dated 04.03.2024 the added respondent no. 6, however, declined to extend the period of lease for 39 months as prayed for by the writ petitioner.

5. At the time of hearing learned Advocate appearing on behalf of the writ petitioner at the very outset draws attention of this Court to the order dated 11.03.2024 as passed by the added respondent no. 6. Attention of this Court is also drawn to the copy of the lease deed dated 10.04.2013 as has been filed on behalf of the writ petitioner.
6. In course of his submission learned Advocate for the writ petitioner also draws attention of this Court to page no. 8 of the said copy of the deed of lease. It is submitted that from Clause 3(b) of Part VI of

the said deed of lease it would reveal that while executing the said deed of lease a target was given to the lessee for extraction of sand from the leasehold area per annum and it has been specifically stated therein that on account of the failure on the part of the lessee, penalty would be imposed upon the lessee. It is further submitted that from the said Clause 3(c) it would reveal further that it has been agreed by and between the lessor and the lessee that the penalty on account of the shortfall of the quantity would be realized from the lessee at the end of the year.

7. At this juncture, learned Advocate for the writ petitioner ones again draws attention of this Court to the order dated 23.12.2015 as passed by the respondent no. 5/authority in connection with the case bearing District – Paschim Medinipur No. 21 of 2015 as has been initiated by the said respondent no. 5 pursuant to a show cause issued against the original lessee. It is submitted on account of pendency of the said case no. 21 of 2015 the original lessee who is the husband of the writ petitioner was prevented from extracting sand from the leased out area of the river bed.
8. Drawing attention to the order dated 13.03.2018 as passed by the respondent no. 2/authority it is submitted that before the respondent no. 2/authority the appeal as preferred by the original lessee was allowed in-part whereby and whereunder the original lessee was exonerated from paying any penalty as has been imposed

by the respondent no. 5 on the allegation of extraction of sand beyond the leased out area, however, the said appellate authority imposed a penalty to tune of Rs. 3,76,840/- on account of short fall of extraction which has been deposited by the original lessee on 31.05.2018.

9. It is thus submitted that in view of the fact that the original lessee was unreasonably prevented by the respondent no. 5/authority with an untrue allegation of extraction of land beyond the leased out area there cannot be any hesitation to hold that the original lessee was prevented for 39 months from extracting land without any valid and proper reason. It is further submitted that in view of the specific clause in Part VII of the said deed of lease that the penalty for shortfall of extraction would be realized at the end of the year the respondents/authorities, more specifically, the respondent no. 5 was not justified in preventing the original lessee from extracting sand during the said period of lease.
10. It is thus submitted that the added respondent no. 6 while passing the order under challenge dated 11.03.2024 has failed to visualize that the original lessee was prevented from extracting sand from the leased out area for no fault of his own but on account of unreasonable restriction imposed by the respondent no. 5/authority. It is thus submitted that the present writ petitioner being the wife of the lessee has every right to carry out the extraction for a further

period of 39 months from the leased out area. It is further submitted that in view of the fact as narrated hereinabove, appropriate reliefs may be granted to the writ petitioner in terms of the prayers made in the instant writ petition.

11. *Per contra*, learned advocate appearing for the State in course of his submission also draws attention of this court to page nos.25 and 26 of the instant writ petition being a copy of the order dated 13.03.2018 as passed by the respondent no.2 in an appeal as preferred by the original lessee. It is submitted on behalf of the State that in the last paragraph of the said appellate authority's order, it has been specifically stated by the said appellate authority that in the event the lessee pays the penalty amount as assessed by the said appellate authority, he would be entitled to extract sand till the period ending five years from the date of possession of the leased out area.
12. It is submitted that since the said order of the appellate authority being the respondent no.2 was not assailed, the said order has reached its finality and therefore the added respondent no.6 is very much justified in passing the order which is under challenge.
13. Placing his reliance upon the report as submitted on behalf of the State, it is further submitted by the learned advocate for the respondent State that since the said Rules of 2002 has been repealed with the enactment of the West Bengal Minor Minerals

Concession Rules, 2016 (hereinafter referred to 'the said Rules of 2016' in short), the added respondent no.6 is very much justified in passing the order under challenge.

14. Mr. Saha, learned advocate appearing on behalf of the respondent no.3 adopts the argument of learned advocate for the respondent State.

15. This court has meticulously gone through the entire materials as placed before this court. This court has given its due consideration over the submissions of the learned advocates for the contending parties.

16. For effective adjudication of the instant *lis*, this court considers that the relevant portion of the order dated 11.03.2024 as passed by the added respondent no.6 is required to be looked into and the same is quoted hereinbelow in verbatim :

*“In consideration of all the above facts, I am of the opinion that lease period cannot be extended on the following three grounds:*

- 1. The Rules under which the lease was executed is no more in force.*
- 2. The time lapsed because of the failure of the Lessee to comply with the provision of the lease deed.*
- 3. Shortfall extraction of sand may not be considered as unforeseen circumstances and thus, 'Force Majeure' is not applicable here.*

*In view of above reasons, the prayer of the Petitioner dated 26.07.2021 is considered & rejected.”*

17. It thus appears to this court that the added respondent no.6 while passing the order under challenge, found that the validity of the said Rules of 2002 has expired. The added respondent no.6 further found that on account of failure of the lessor to comply with the provision of the deed of lease, the period of lease has already been expired and lastly he has also found that shortfall of extraction of sand cannot be considered as unforeseen circumstances and therefore the clause ‘*Force Majeure*’ has no manner of application.
18. As discussed in the foregoing paragraphs that during the validity of the aforementioned lease, the writ petitioner was served with show-cause notice on 29.05.2015 by the respondent no.5 authority and since the said respondent no.5 authority was not satisfied with the reply to the said show-cause as given by the original lessee, the original lessee was not permitted to carry out the work of excavation of sand from the leased out portion of the river bed. It has also been discussed in the foregoing paragraphs that in the aforementioned case found the respondent no. 5 found sufficient justification regarding alleged excavation of sand from outside the leased out area as well as loss of royalty on account of shortfall in excavation by the lessee. On account of such finding, the original lessee was

prevented from excavating the sand from the leased out area soon thereafter or immediately prior thereto.

19. Materials have been placed before this court that the original lessee carried the matter into appeal and before the appellate authority i.e. the respondent no.2 herein. Said appeal was allowed in part, wherein the respondent no.2 being the appellate authority found no merit with regard to the allegation against the lessee regarding excavation beyond the leased out area. As discussed supra, the said appellate authority however found that on account of shortfall in excavation of sand, the respondent State suffered loss of royalty for which penalty was imposed which has been duly deposited by the original lessee.
20. As rightly pointed out by the learned advocate for the writ petitioner that from Clause 3(b) of Part VII of the said deed of lease, it would reveal that in case of shortfall of excavation, the penalty would be realized at the end of the year from the lessee.
21. In view of such, this court finds that on account of an untrue allegation, the respondent no.5 most unreasonably prevented the original lessee from extracting sand from the leased out area in terms of the deed of lease as has been executed on 10.04.2013.
22. At this juncture, if I once again look to the order under challenge as passed by the added respondent no.6, it appears to this court that while passing the said order under challenge, the added respondent

no.6 has failed to visualize that on account of wrong action on the part of the respondent no.5 authority, the original lessee had to suffer since he was prevented from a considerable length of time from extracting sand from leased out area of the river bed and on account of such wrong action on the part of the respondent no.5, the original lessee was deprived from his valuable right to extract sand from the leased out area of said river bed which accrued in his favour on execution of the said deed of lease.

23. It thus appears to this court that while passing the order under challenge dated 11.03.2024, the added respondent no.6 has overlooked the sufferings of the original lessee and thus did not consider some material facts which he is bound to consider at the time of passing of the said reasoned order.

24. This court thus considers that the order dated 11.03.2024 as passed by the added respondent no.6 is most unreasonable, since while passing the said order the added respondent no.6 has failed to visualize his contractual obligation as arose on execution of the deed of lease by and between the Governor of West Bengal and the original lessee in accordance with the provisions of Articles 298 and 299 of the Constitution of India.

25. This court further holds that the added respondent no.6 cannot be permitted to use the repealing provisions of the said Rules of 2002

as a shield to avoid the said contractual obligation. This Court thus finds arbitrariness in the action of the respondents/authorities.

26. This court thus found sufficient merit in the instant writ petition.

Accordingly, WPA 9108 of 2024 is hereby allowed and disposed of.

27. Consequently the order dated 11.03.2024 as passed by the respondent no.6 is hereby quashed.

28. Consequently the respondent no.5 is hereby directed to allow the writ petitioner being the widow of the original lessee to carry out the work of excavation in the leased out area of the river bed purely in terms of the provision of the said deed of lease as has been executed on 10.04.2013 by and between the Governor of West Bengal and Naresh Chandra Basu, the deceased husband of the writ petitioner.

29. It is further directed that the respondent no.4 authority shall permit the writ petitioner to carry out the work of excavation for a period of further 39 months preferably within six months from the date of communication of the server copy of this order, subject to compliance of all other formalities by the writ petitioner.

30. Urgent photostat certified copy if applied for be given to all the parties, upon compliance of all necessary formalities.

**(PARTHA SARATHI SEN, J.)**