

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

Present:

The Hon'ble Justice Partha Sarathi Sen

WPA 13654 of 2024

**Pradip Arora
Vs.
The State of West Bengal & Ors.**

For the petitioner	:	Mr. Probal Mukherjee, Sr. Adv. Mr. A. S. Tarafdar
For the State	:	Mr. Chandi Charan De, AGP Ms. Reshma Chatterjee
For the respondent no. 2	:	Mr. Sanjay Saha Mr. Raju Mondal
Heard on	:	15.07.2025
Judgment on	:	15.07.2025

PARTHA SARATHI SEN, J.:

1. The parties to the instant writ petition are represented by their respective Counsels.
2. By filing the instant writ petition the writ petitioner has prayed for issuance of appropriate writ/writs against the respondents/authorities commanding them to take a decision in respect of the representations of the writ petitioner particulars of

which has been mentioned in prayer (b) of the instant writ petition with a further prayer for issuance of appropriate writ against the respondents/authorities more specifically against the respondent nos. 4 and 5 commanding them to add the period during which the mining operations of the writ petitioner were kept suspended in respect of the sand mining block i.e., plot no. 967(P), block no. MNKT/Kankora/967(P)/A, admeasuring about 8.87 acres (3059 hectares), comprised within Mouza – Kankora, J.L. no. 84, P.S. Mongolkote, District – Purba Bardhaman.

3. For effective adjudication of the instant writ petition some chronology of events leading to filing of the instant writ petition are required to be dealt with and those are discussed thereunder in seriatim:

- (i) Pursuant to a notice inviting e-auction for grant of mining lease of sand dated 29.11.2016 in respect of the sand block mentioned hereinabove the writ petitioner is found to be successful bidder.
- (ii) Being a successful bidder a lease deed dated 31.12.2018 was executed by the respondent no. 4 (lessor) in favour of the writ petitioner (lessee) in respect of the aforementioned sand block for excavation and extraction of sand and the period of said lease was for five years.

- (iii) On 24.01.2019 the possession of the said sand block was, however, handed over to the writ petitioner.
- (iv) During the subsistence of the said lease the respondents/authorities noticed alleged violation on the part of the writ petitioner regarding excavation of sand beyond the leasehold area and accordingly the work of excavation of sand by the writ petitioner pursuant to the said deed of lease was suspended on and from April, 2019.
- (v) The respondents/authorities issued a show-cause notice to the writ petitioner and on receipt of the reply of the writ petitioner the respondents/authorities were not satisfied and thus imposed a penalty to the tune of Rs. 47,85,657/- upon the writ petitioner for the alleged violation of the provisions of the Mines and Minerals (Development and Regulation) Act, 1956 (hereinafter referred to as the 'said Act of 1956').
- (vi) The said demand notice was challenged in a writ petition being WPA 11734 of 2021.
- (vii) By an order dated 17.08.2021 a co-ordinate Bench disposed of the said writ petition whereby and whereunder the aforementioned demand to the tune of Rs. 47,85,657/- was quashed and at the same time the

said Court remanded the proceeding as pending before the authority as against the writ petitioner for its logical conclusion within a stipulated period.

(viii) Upon remand the respondent no. 5/authority by his reasoned order dated 22.09.2021 found sufficient justification in the prayer of the writ petitioner. Accordingly, the proceeding as has been initiated on the allegation of excess mining was dropped. Consequently, the said respondent no. 5/authority passed an order for reopening of the relevant leased out sand block and permitted the writ petitioner to carry on his business of extraction and/or excavation of sand.

4. After completion of the said proceeding before the respondent no. 5/authority the writ petitioner found that in terms of the said lease deed dated 31.12.2018 the writ petitioner could not carry on his business from April, 2019 to September, 2021 and accordingly the writ petitioner made an application for extension of the lease period for the period for which he could not excavate sand on account of issuance of suspension order by the respondent no. 4/authority.
5. By a memo dated 01.06.2011 the respondent no. 5/authority, however, assured the writ petitioner regarding its prayer for extension in a positive manner if law permits.

6. In course of hearing, Mr. Mukherjee, learned Senior Advocate appearing on behalf of the writ petitioner draws attention of this Court to page no. 165 of the instant writ petition being a copy of the memo dated 25.08.2023 as issued by the respondent no. 5/authority addressed to the Secretary of the respondent no. 2 department. It is submitted by Mr. Mukherjee that under cover of the said memo dated 25.08.2023 the application of the writ petitioner for extension along with all relevant documents have been forwarded to the said departmental Secretary for taking appropriate action.
7. At this juncture, attention of this Court is drawn to page no. 46 of the affidavit-in-opposition as filed on behalf of the respondent nos. 4 and 5. It is submitted by Mr. Mukherjee that in a meeting of DLSC on 02.08.2023 it has been resolved that the prayer of the writ petitioner for extension of the period of lease would be forwarded to the respondent no. 3/authority.
8. It is further submitted by Mr. Mukherjee that despite sending all papers including the representation of the writ petitioner and the resolution of the DLSC the respondent no. 3/authority have not taken any decision as yet.
9. At this juncture, Mr. Mukherjee draws attention of this Court to the West Bengal Minor Minerals Concession Rules, 2016 (hereinafter referred to as the 'said Rules of 2016'). It is submitted by Mr.

Mukherjee that Rule 5 of the said Rules of 2016 clearly postulates that in case of mining operation over a river bed area the period of lease can be executed for a period up to 10 years. Drawing attention to West Bengal Sand (Mining, Transportation, Storage and Sale) Rules, 2021 (hereinafter referred to as the 'said Rules of 2021') it is submitted by Mr. Mukherjee that Rule 5 of the said Rules of 2021 further postulates that the period of sand mining lease shall be minimum five years and maximum 20 years.

10. It is thus submitted by Mr. Mukherjee that in view of clear legislative mandate as available in the aforementioned two subordinate legislations there cannot be any difficulty on the part of the respondents/authorities to extend the period of lease for 29 months (on account of suspension from April, 2019 to September, 2021).
11. It is further submitted by Mr. Mukherjee that the respondents/authorities cannot avoid their obligation to extend the period of lease as prayed for taking the plea that the period of lease for five years have expired and the West Bengal Sand Mining Policy, 2021 says that in existing leases the lease shall not be renewed.
12. It is thus submitted by Mr. Mukherjee that by no stretch of imagination a policy of the Government can either be termed as legislation or subordinate legislation and a policy of a State cannot be derogatory to the relevant Acts and Rules. It is thus submitted

by Mr. Mukhejee that it is a fit case for allowing the instant writ petition in terms of the prayers made by the writ petitioner.

13. *Per contra*, Mr. De, learned AGP appearing on behalf of the respondents/State and its instrumentalities draws attention of this Court to the affidavit-in-opposition as filed by the respondent nos. 4 and 5. It is submitted by Mr. De that sufficient materials have been placed before this Court that the representations of the writ petitioner and resolutions of the meeting of DLSC have already been forwarded to the respondent no. 3/authority. It is thus submitted by Mr. De that in his usual fairness the respondent no. 3 may be directed to take appropriate decision over the representation(s) of the writ petitioner.
14. On being asked by this Court Mr. De, learned AGP, however, could not apprise as to what prompted the respondent no. 3 to sit tight over the matter despite sending all representations of the writ petitioner including the aforementioned resolution of the DLSC on 25.08.20203 by the respondent no. 5/authority.
15. For effective adjudication of the instant writ petition this Court at the very outset proposes to look to Rule 50 of the said Rules of 2016 which is quoted hereinbelow in verbatim:

“50. Penalty.-

- (1)
- (2)
- (3)

- (4)
- (5) *Whenever any person removes, without any lawful authority, any mineral from any land, the State Government or the authority authorized in this behalf by the State Government may recover from such person the mineral so removed or where such minerals has already been disposed of, the price thereof, and may also recover from such person the rent, royalty or tax, as the case may be, for such period during which the land was occupied by such person without any lawful authority.*
- (6)
- (7)”

16. On careful perusal of the aforementioned legislative provision it appears to this Court that the Rule 50(5) of the said Rules of 2016 clearly mandates that the State Government or the authority authorized in this behalf by the State Government is entitled to recover from the person who without any lawful authority removes any mineral from any land, such minerals as has been so removed and where such minerals have been disposed of, the price thereof and at the same time the said authority is entitled to recover the rent, royalty or tax for such period during which the land was occupied by the said offending person without any lawful authority.
17. Keeping in mind, the aforementioned provisions of the said Rules if I look to the order dated 17.08.2021 as passed by a co-ordinate Bench of this Court in WPA 11734 of 2021 it reveals that the said

co-ordinate Bench quashed the demand of the respondents/authorities to the tune of Rs. 47,85,657/- towards fine as proposed to be recovered from the writ petitioner herein by the respondents/authorities on the allegation of illegal mining beyond the leased out area. By the self-same order the said co-ordinate Bench directed the respondent nos. 4/5/authorities to conclude the proceeding as pending against the writ petitioner on account of alleged illegal excavation within a stipulated period. Materials have been placed before this Court that the respondent no. 5/authority by its order dated 22.09.2021 practically dropped the said proceeding finding no sufficient material to substantiate allegation against the writ petitioner and thus directed that the relevant leased out sand block be reopened and the writ petitioner be permitted to carry out his business with prospective effect.

18. Such being the position, this Court has got no hesitation to hold that the order of suspension of work as issued by the respondent nos. 4/5/authorities against the writ petitioner on and from April, 2019 till September, 2021 cannot be justified though the writ petitioner was granted lease for a period of five years from the date of execution of the date of lease.
19. This Court further finds that on behalf of the writ petitioner several representations have been submitted with the different authorities

for allowing extension for a period of 29 months on the ground that his business was stopped for no fault of him.

20. Materials have been placed before this Court on behalf of the writ petitioner that pursuant to the decision of the DLSC the entire matters were placed before the respondent no. 3/authority for consideration in the year 2023 and till date no positive steps have been taken by the respondent no. 3/authority for disposal of the representations of the writ petitioner for extension of lease. On behalf of the writ petitioner, relevant provisions of the Rules have been placed to substantiate that a lease for excavation of sand from river bed shall be for minimum five years which may extend to 20 years. Admittedly, the policy of the Government says that after expiry of the period of lease, such lease shall not be renewed and it will be automatically resumed and would be vested with the State Government.
21. In considered view of this Court and as rightly pointed out by Mr. Mukherjee that the said policy; more specifically the West Bengal Sand Mining Policy of 2021 cannot have an overriding effect over the said Rules of 2016 as well as the said Rules of 2021.
22. As discussed hereinabove that the respondents/authorities could not justify their action for suspending the writ petitioner preventing him to carry out the mining operation for 29 months that is from April, 2019 to September, 2021.

23. In considered view of this Court, there cannot be any hesitation to hold that such an action on the part of the respondents/authorities is opposed to public policy and having no legal basis at all.
24. This Court further holds that the action of the respondents/authorities that is keeping the representations of the writ petitioner pending for a considerable length of time clearly indicates complete apathy on the part of the respondents/authorities to the writ petitioner.
25. This Court thus considers that there are sufficient merits in the instant writ petition.
26. Accordingly, the instant writ petition is allowed.
27. Consequently, the respondent nos. 4 and 5/authorities are hereby directed to extend the period of lease as has been executed on 31.12.2018 for a further period of 29 months with effect from August 18, 2025 in respect of the aforementioned sand block as specifically mentioned in paragraph no. 4 of the instant writ petition upon compliance of all legal formalities, if there be any, on the part of the writ petitioner.
28. The time limit as fixed by this Court is mandatory and peremptory.
29. Liberty is given to the learned Advocate for the writ petitioner to communicate the server copy of this order to the respondent nos. 4 and 5 herein.

30. Respondent nos. 4 and 5 are directed to act on the server copies of this order.
31. With the aforementioned observation, the instant writ petition being WPA 13654 of 2024 is disposed of.
32. 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.)